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#### LANDS IN IDAHO

The joint resolution (H. J. Res. 171) authorizing the Secretary of the Interior to approve the application of the State of Idaho to certain lands under an act entitled "An act to authorize the State of Idaho to exchange certain lands heretofore granted for public-school purposes for other Government lands," approved September 22, 1922, was considered as in Committee of the Whole.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### CUSTOMS WAREHOUSE, SAN JUAN, P. R.

The bill (H. R. 9314) to provide for the enlargement of the present customs warehouse at San Juan, P. R., was considered as in Committee of the Whole.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

The VICE PRESIDENT. That completes the calendar.

#### GEORGE BARRETT

Mr. JOHNSON. Mr. President, I ask unanimous consent to return to Order of Business 195, Senate bill 3031, for the relief of George Barrett. I ask it because the man is dying of tuberculosis. Nothing is asked in his behalf except the correction of a record, and it is a case that is singularly appealing. The bill has been reported favorably without amendment.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read as follows:

*Be it enacted, etc.,* That in the administration of any laws conferring rights, privileges, or benefits upon honorably discharged soldiers, their widows, and dependent relatives George Barrett, Army serial No. 1637071, who was a private of Battery F, Twelfth Field Artillery, shall hereafter be held and considered to have been honorably discharged from the military service of the United States as a member of said battery and regiment on the 3d day of April, 1919: *Provided,* That no back pay or allowance of any kind shall be held to have accrued prior to the passage of this act.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

#### W. P. DALTON

Mr. CAMERON. Mr. President, I ask unanimous consent to recur to Order of Business No. 253, Senate bill 464, for the relief of W. P. Dalton. A similar bill passed the Senate in the last Congress, but got caught in the jam, and did not get through. It is one of the most meritorious bills that can come up.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read, as follows:

*Be it enacted, etc.,* That the sum of \$5,000 be, and the same is hereby, appropriated, out of any money in the Treasury of the United States not otherwise appropriated, for the payment in full of the claim of W. P. Dalton for injuries sustained at Laguna Dam, Ariz., on November 16, 1908, while in the employ of the United States Reclamation Service.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

#### ENLARGEMENT OF TARGET RANGE AT AUBURN, ME.

Mr. HALE. Mr. President, I ask unanimous consent to take up Order of Business 413, Senate bill 2876, for the purchase of a tract of land adjoining the United States target range at Auburn, Me.

This is a bill that I asked to have put over a short time ago. The bill provides for the expenditure of \$3,000 for the purchase of land adjoining a Federal rifle range at Auburn, Me. The committee reported the bill with an amendment providing that the money should be taken out of funds allotted to the State of Maine by the United States from the appropriation "Arming, equipping, and training the National Guard," and I think there can be no objection to it.

Mr. KING. It does not increase the appropriation?

Mr. HALE. Oh, no; it comes out of the money already appropriated.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Military Affairs with an amendment.

The amendment was, on page 1, line 7, after the words "rifle range, and," to strike out "there is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, a sum not to exceed \$3,000, to purchase the above-described property," and to insert "to purchase said property the Secretary of War is authorized to expend a sum not to exceed \$3,000, from funds allotted to the State of Maine by the United States from the appropriation 'Arming, equipping, and training the National Guard,' for the fiscal year ending June 30, 1927," so as to make the bill read:

*Be it enacted, etc.,* That the Secretary of War be, and he is hereby, authorized to purchase the tract of land adjoining the United States target range at Auburn, Me., comprising 84 acres, more or less, the property of the heirs of John Barron, for the purpose of adding to said rifle range, and to purchase said property the Secretary of War is authorized to expend a sum not to exceed \$3,000, from funds allotted to the State of Maine by the United States from the appropriation "Arming, equipping, and training the National Guard," for the fiscal year ending June 30, 1927.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

#### EXECUTIVE SESSION

Mr. KING. Mr. President, I understand that it is desired to have an executive session.

Mr. FESS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After three minutes spent in executive session the doors were reopened.

#### RECESS

Mr. JONES of Washington. I move, in accordance with the unanimous-consent agreement heretofore entered into, that the Senate take a recess until 12 o'clock Monday.

The motion was agreed to; and the Senate (at 4 o'clock and 37 minutes p. m.), under the order previously made, took a recess until Monday, April 12, 1926, at 12 o'clock m.

## SENATE

Monday, April 12, 1926

(Legislative day of Monday, April 5, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

Mr. GOFF. Mr. President—

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Fernald	Keyes	Robinson, Ark.
Bayard	Ferris	King	Robinson, Ind.
Bingham	Fess	La Follette	Sackett
Blease	Fletcher	Lenroot	Sheppard
Borah	Frazier	McKellar	Shipstead
Bratton	George	McLean	Shortridge
Broussard	Gerry	McMaster	Simmons
Bruce	Gillett	McNary	Smith
Butler	Glass	Mayfield	Smoot
Cameron	Goff	Metcalf	Stanfield
Capper	Gooding	Moses	Stephens
Caraway	Greene	Neely	Swanson
Copeland	Hale	Norbeck	Tammell
Couzens	Harrell	Norris	Tyson
Cummins	Harris	Nye	Wadsworth
Curtis	Harrison	Oddie	Walsh
Dale	Hedin	Overman	Warren
Deneen	Howell	Phelps	Watson
Dill	Johnson	Pine	Weller
Edge	Jones, N. Mex.	Ransdell	Wheeler
Edwards	Jones, Wash.	Reed, Mo.	Williams
Ernst	Kendrick	Reed, Pa.	Willis

Mr. PHIPPS. I wish to announce that my colleague, the junior Senator from Colorado [Mr. MEANS], is detained from the Senate by illness. I ask that this announcement may stand for the day.

The VICE PRESIDENT. Eighty-eight Senators having answered to their names, a quorum is present. The Senate will receive a message from the President of the United States.

## PRESIDENTIAL APPROVALS

A message from the President of the United States, by Mr. Latta, one of his secretaries, announced that the President had approved and signed the following acts:

On April 9, 1926:

S. 3547. An act to change the title of Deputy Assistant Treasurer of the United States to Assistant Treasury of the United States.

On April 12, 1926:

S. 2029. An act to authorize the use by the city of Tucson, Ariz., of certain public lands for a municipal aviation field, and for other purposes.

## RIGHTS OF AMERICAN CITIZENS IN MEXICO (S. DOC. 96)

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read and, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed:

To the Senate:

I transmit herewith from the Secretary of State a copy of the official correspondence exchanged between the Governments of the United States and Mexico regarding the two laws regulating section 1 of article 27 of the Mexican constitution. In this connection reference is made to the resolution adopted by the Senate on March 6, 1926, in respect to an alleged serious dispute between the two Governments with regard to the rights of American citizens in certain oil lands in Mexico.

CALVIN COOLIDGE.

THE WHITE HOUSE, April 12, 1926.

## ANNUAL REPORT OF THE FEDERAL RESERVE BOARD

The VICE PRESIDENT laid before the Senate a communication from the governor of the Federal Reserve Board, transmitting, pursuant to law, the twelfth annual report of the board, covering operations for the year 1925, which, with the accompanying report, was referred to the Committee on Banking and Currency.

## MESSAGE FROM THE HOUSE

A message from the House, by Mr. Haltigan, one of its clerks, announced that the House had passed the bill (S. 3186) to promote the production of sulphur upon the public domain, with amendments, in which it requested the concurrence of the Senate.

The message also announced that the House had passed a bill (H. R. 9690) to authorize the construction and procurement of aircraft and aircraft equipment in the Navy and Marine Corps, and to adjust and define the status of the operating personnel in connection therewith, in which it requested the concurrence of the Senate.

## ENROLLED BILL AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker of the House had affixed his signature to the following enrolled bill and joint resolution, and they were thereupon signed by the Vice President:

H. R. 8917. An act making appropriations for the military and nonmilitary activities of the War Department for the fiscal year ending June 30, 1927, and for other purposes; and

S. J. Res. 61. Joint resolution authorizing the Federal Reserve Bank of Chicago to enter into contracts for the erection of a building for its branch establishment in the city of Detroit, Mich.

## PETITIONS AND MEMORIALS

Mr. KENDRICK. Mr. President, I present a petition numerously signed by citizens of Lincoln County, Wyo., consisting of two short paragraphs. I ask that the body of the petition be printed in the RECORD and referred to the Committee on the Judiciary.

There being no objection, the petition was referred to the Committee on the Judiciary and ordered to be printed in the RECORD without the names, as follows:

Counter petition

To the Congress of the United States:

Whereas it has been reported that certain petitions have been circulated and signed, demanding repeal of present prohibition laws, or amendments, so as to permit the sale and use of light liquors and wines; and

Whereas such legislation would amount to nothing more than experiment, which in all probability would only further the more flagrant violation, if possible, of restrictions or prohibition laws, and would make any kind of restrictions more difficult of enforcement than even the present laws:

Therefore, we, the undersigned citizens of the United States, residing in Lincoln County, Wyo., believing it would be a serious mistake to repeal present prohibition laws, or to amend them so as to permit

light liquors and wines, do hereby respectfully petition the Congress of the United States to not in any way relax nor abridge present laws, but on the contrary to in every possible way more rigidly prohibit the manufacture, importation, and sale of intoxicating liquors, and to provide for more rigid law enforcement.

Mr. KENDRICK. I also present a memorial signed by Mrs. H. N. Robinson, Mrs. Verne St. John, and over 1,400 other citizens of my home town of Sheridan, Wyo. I ask that the body of the memorial be printed in the RECORD and referred to the Committee on the Judiciary.

There being no objection, the memorial was referred to the Committee on the Judiciary and ordered to be printed in the RECORD without the names, as follows:

We, the undersigned residents of Sheridan County, Wyo., of lawful age, knowing that the United States Congress is being petitioned to modify the national prohibition act to permit the manufacture and sale of light wines and beer, do hereby protest against such modification or otherwise weakening said law.

Mr. WARREN presented resolutions adopted by South Superior (Wyo.) Lodge, Slovene National Benefit Society, protesting against the enactment of legislation to provide for the registration of aliens, which were referred to the Committee on Immigration.

Mr. CAPPER presented a petition numerously signed by citizens of Hollis, Kans., praying for the passage of legislation granting increased pensions to Civil War veterans, their widows and dependents, which was referred to the Committee on Pensions.

He also presented petitions, numerously signed by citizens of Troy, Paola, and Wichita, all in the State of Kansas, praying for the enactment of legislation granting increased pensions to veterans of the war with Spain, their widows and dependents, which were referred to the Committee on Pensions.

Mr. BINGHAM presented a paper in the nature of a petition from the Civitan Club, of Bridgeport, Conn., favoring the passage of legislation providing a new post-office building at the city of Bridgeport, which was referred to the Committee on Public Buildings and Grounds.

He also presented a paper in the nature of a petition from camps of Sons of Union Veterans of the Civil War in New Haven, Derby, Ansonia, Seymour, Naugatuck, Waterbury, Thomaston, and Torrington, all in the State of Connecticut, favoring the passage of legislation granting increased pensions to veterans of the Civil War, their widows and dependents, which was referred to the Committee on Pensions.

He also presented papers in the nature of petitions from officers and members of the Fraternal Order of Eagles, No. 1783, of Winsted, and members of Sidney Beach Auxiliary, No. 11, United Spanish War Veterans, of Bridgeport, all in the State of Connecticut, praying for the passage of legislation granting increased pensions to veterans of the war with Spain, their widows and dependents, which were referred to the Committee on Pensions.

He also presented a telegram from Local No. 147, Post Office Clerks, of Hartford, Conn., favoring the passage of the so-called Lehlbach-Stanfield civil service retirement bill, which was referred to the Committee on Civil Service.

He also presented a resolution adopted by the Connecticut branch of the National Association of Postal Supervisors, of New Haven, Conn., requesting the Connecticut delegation in Congress to use their best efforts to prevent "the shelving of the retirement bill at this session," which was referred to the Committee on Civil Service.

He also presented a resolution adopted by Enfield Grange, No. 151, of Hartford, Conn., favoring the passage of House bill 6563, the so-called Dickinson bill, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Hartford Bird Study Club, of Hartford, Conn., praying for the passage of House bill 7479, to establish refuges for migratory birds, which was referred to the Committee on Agriculture and Forestry.

He also presented a paper in the nature of a petition from the Hartford (Conn.) Chamber of Commerce, favoring the passage of Senate bill 4213 and House bill 747, relating to sales and contracts in interstate and foreign commerce, which was referred to the Committee on Interstate Commerce.

He also presented a paper in the nature of a petition from Division No. 867, International Brotherhood Locomotive Engineers, of Waterbury, Conn., favoring the passage of the so-called railway labor bill, which was referred to the Committee on Interstate Commerce.

He also presented a paper in the nature of a petition from the Federation of Parent-Teacher Associations, of Bridgeport, Conn., representing 22 separate associations, favoring the

passage of the so-called Curtis-Reed bill, to establish a Federal department of education, which was referred to the Committee on Education and Labor.

He also presented a telegram and a paper in the nature of memorials from the Catholic Daughters of America, of Bridgeport, Conn., and L'Ordre des Forestiers Franco-Américains, of Woonsocket, R. I., protesting against the passage of the so-called Curtis-Reed bill, to establish a Federal department of education, which were referred to the Committee on Education and Labor.

He also presented resolutions adopted by Lodge No. 1 of the Fraternity of Royal Elephants, of Waterbury, Conn., expressing its disapproval of the so-called Volstead law and favoring the modification thereof, which were referred to the Committee on the Judiciary.

He also presented a paper in the nature of a petition from the Stamford (Conn.) group of Epworth Leagues, favoring the enforcement of the eighteenth amendment to the Constitution and the laws relating thereto, without modification, which was referred to the Committee on the Judiciary.

He also presented a paper in the nature of a petition from the New Haven (Conn.) Trades Council, favoring the passage of legislation restoring citizenship to Eugene V. Debs and also protesting against the passage of legislation providing for the finger printing of aliens, which was referred to the Committee on the Judiciary.

He also presented petitions and papers in the nature of petitions from the Concordia Sick Benefit Society, of New Britain; General J. Putnam Unit of the General Steuben Society, of Greenwich; the German School Society, of New Britain; the Turners' Society, of New Britain; Carl Schurz Unit No. 22, Steuben Society, of Hartford; and the Teutonia Maennerchor (Inc.), of New Britain, all in the State of Connecticut, praying for the passage of legislation providing for the return of seized alien property to its owners, which were referred to the Committee on the Judiciary.

#### REPORTS OF COMMITTEES

Mr. COUZENS, from the Committee on Civil Service, to which was referred the bill (S. 3560) to authorize the granting of leave to ex-service men and women to attend the annual convention of the American Legion in Paris, France, in 1927, reported it without amendment and submitted a report (No. 571) thereon.

Mr. GOODING, from the Committee on Irrigation and Reclamation, to which was referred the bill (S. 3732) making appropriations for the Hillcrest and Black Canyon units of the Boise reclamation project, Idaho, reported it with amendments and submitted a report (No. 572) thereon.

Mr. CAPPER, from the Committee on the District of Columbia, to which was referred the bill (S. 2477) to vacate certain streets and alleys within the area known as the Walter Reed General Hospital, District of Columbia; and to authorize the extension and widening of Fourteenth Street from Montague Street to its southern terminus south of Dahlia Street, reported it with amendments and submitted a report (No. 573) thereon.

Mr. ODDIE, from the Committee on Public Lands and Surveys, to which was referred the bill (S. 3759) authorizing issuance of patent to Richard Murphy, reported it without amendment and submitted a report (No. 574) thereon.

Mr. HARRELD, from the Committee on the Judiciary, to which was referred the bill (H. R. 9305) to amend paragraph 1 of section 101 of the Judicial Code, as amended, reported it with amendments.

Mr. STANFIELD, from the Committee on Public Lands and Surveys, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (H. R. 2761) for the relief of Nora B. Sherrier Johnson (Rept. No. 576);

A bill (H. R. 2797) for the relief of Mary M. Pride (Rept. No. 577);

A bill (H. R. 8534) to amend an act entitled "An act to authorize the purchase by the city of McMinnville, Oreg., of certain lands formerly embraced in the grant to the Oregon & California Railroad Co. and revested in the United States by the act approved June 9, 1916," approved February 25, 1919 (40 Stat. p. 1153) (Rept. No. 578); and

A bill (H. R. 8817) reserving certain described lands in Coos County, Oreg., as public parks and camp sites (Rept. No. 579).

#### AMENDMENT OF RULE XXXVIII

Mr. CURTIS. From the Committee on Rules, I report back with an amendment the resolution (S. Res. 188) to amend paragraph 2 of Rule XXXVIII of the Standing Rules of the

Senate relative to nominations, and I submit a report (No. 575) thereon. The committee was instructed to report back within seven days and I had intended to submit the report on last Saturday, but I understand the seven-day limit does not expire until to-day.

The amendment proposed by the Committee on Rules was to strike out all after line 3 of the resolution, and in lieu thereof to insert the following:

2. All information communicated or remarks made by a Senator when acting upon nominations concerning the character or qualifications of the person nominated shall be kept secret, but all votes upon any nomination shall be printed in the CONGRESSIONAL RECORD whenever the Senate by a majority vote shall so order. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret. This rule shall not apply to a Senator making public his own vote.

Mr. ROBINSON of Arkansas. In the same connection I offer the following amendment in the nature of a substitute for the resolution as reported by the Senator from Kansas [Mr. CURTIS].

Strike out paragraph 2 of rule 38 and insert:

"Hereafter nominations made by the President to the Senate shall be considered and voted on in open session except when otherwise ordered by a majority vote of the Senate."

The VICE PRESIDENT. The resolution reported by the Senator from Kansas and the amendment in the nature of a substitute submitted by the Senator from Arkansas will be printed and the resolution will be placed on the calendar.

#### ENROLLED JOINT RESOLUTION PRESENTED

Mr. GREENE, from the Committee on Enrolled Bills, reported that to-day that committee presented to the President of the United States the enrolled joint resolution (S. J. Res. 61) authorizing the Federal Reserve Bank of Chicago to enter into contracts for the erection of a building for its branch establishment in the city of Detroit, Mich.

#### BILLS AND JOINT RESOLUTIONS INTRODUCED

Bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. EDGE:

A bill (S. 3954) for the relief of Lewis C. Hopkins & Co.; to the Committee on Claims.

By Mr. McMASTER:

A bill (S. 3955) granting a pension to George C. Widlon; to the Committee on Pensions.

By Mr. ASHURST:

A bill (S. 3956) for the relief of Lawrence McCreanor; to the Committee on Military Affairs.

By Mr. GOFF:

A bill (S. 3957) granting an increase of pension to Orien K. Tillman; to the Committee on Pensions.

By Mr. HARRELD (by request):

A bill (S. 3958) to provide for the permanent withdrawal of certain lands adjoining the Makah Indian Reservation in Washington for the use and occupancy of the Makah and Quileute Indians; to the Committee on Indian Affairs.

By Mr. McNARY:

A bill (S. 3959) to increase the salaries of the chief justice and the associate justices of the Supreme Court of the Philippine Islands; to the Committee on the Judiciary.

A bill (S. 3960) granting an increase of pension to Charles A. Bills; and

A bill (S. 3961) granting an increase of pension to Cynthia Rudler Osgood; to the Committee on Pensions.

By Mr. REED of Missouri:

A bill (S. 3962) for the relief of Busch-Sulzer Bros.-Diesel Engine Co. (with accompanying papers); to the Committee on Claims.

By Mr. STANFIELD:

A bill (S. 3963) to provide for the protection, development, and utilization of the public lands in Alaska by establishing an adequate system for grazing livestock thereon; to the Committee on Public Lands and Surveys.

By Mr. FLETCHER:

A bill (S. 3964) for the relief of Buel J. Fenton (with accompanying papers); to the Committee on Military Affairs.

By Mr. McKELLAR:

A bill (S. 3965) to establish a national military park at the battle field of Stone River, Tenn.; to the Committee on Military Affairs.

By Mr. ROBINSON of Indiana:

A joint resolution (S. J. Res. 91) directing the Secretary of War to allot war trophies to the American Legion Museum; to the Committee on Military Affairs.

By Mr. STEPHENS:

A joint resolution (S. J. Res. 92) consenting that certain States may sue the United States, and providing for trial on the merits in any suit brought hereunder by a State to recover direct taxes alleged to have been illegally collected by the United States during the years 1866, 1867, and 1868, and vesting the right in each State to sue in its own name; to the Committee on Claims.

#### AMENDMENTS TO RIVERS AND HARBORS BILL

Mr. FLETCHER submitted two amendments intended to be proposed by him to the bill (H. R. 11176) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which were referred to the Committee on Commerce and ordered to be printed.

#### MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Chaffee, one of its clerks, announced that the House disagreed to the amendment of the Senate to the bill (H. R. 8908) granting the consent of Congress to George Washington-Wakefield Memorial Bridge, a corporation, to construct a bridge across the Potomac River; requested a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. DENISON, Mr. BURTNESSE, and Mr. PARKS were appointed managers on the part of the House at the conference.

#### INDUSTRIAL DEVELOPMENT OF THE SOUTH

Mr. TRAMMELL. Mr. President, I ask unanimous consent to have printed in the Record at this point a clipping in regard to the industrial development of the South, taken from the Washington Herald of yesterday.

The VICE PRESIDENT. Without objection it is so ordered. The clipping is as follows:

[From the Washington Herald, April 11, 1926]

#### SOUTHERN BUILDING ACTIVITY CONTINUES

No indications of a let-up in the tremendous building activities of Florida and the entire South are in sight, according to the official building reports for the 12 Southern States made public to-day by S. W. Straus & Co.

Of special interest are the reports from Florida, showing that building activities in all parts of that State are not only continuing along former spectacular lines, but are rapidly gaining momentum.

In the 132 leading southern cities, building permits amounting to \$54,920,131 were issued in March. In the 83 cities which submitted comparable figures, there was a gain of 29 per cent over March, 1925, and of 34 per cent the first quarter of the year.

The 60 principal Florida cities issued \$20,827,877 in March building permits. Nineteen of these centers submitted comparable figures, showing a gain of 98 per cent over last March, and of 92 per cent for the quarter.

Amazing building activities continued in Miami where building permits of \$3,330,923 were filed in March, a gain of 28 per cent over the same month a year ago. Since the 1st of January Miami's building declarations have totaled \$10,925,936, a 48 per cent increase over the same period a year ago. Houston was a close second to Miami among the southern cities, and Louisville a very creditable third. Among the 25 leading building cities of the South 7 were in Florida, 5 in North Carolina, and 4 in Texas.

Among the southern cities where very unusual building activities are pending, as revealed by the Straus reports, are Birmingham, Memphis, Dallas, Fort Worth, Amarillo, San Antonio, New Orleans, Greensboro, Charlotte, Winston-Salem, Asheville, High Point, Atlanta, St. Petersburg, Tampa, Jacksonville, Fort Lauderdale, West Palm Beach, and Coral Gables.

#### SENATOR FROM IOWA

The Senate resumed the consideration of the resolution (S. Res. 194) declaring Daniel F. Steck to be a duly elected Senator of the United States from the State of Iowa for the term beginning March 4, 1925, reported by Mr. ERNST from the Committee on Privileges and Elections.

The VICE PRESIDENT. The Senator from West Virginia [Mr. GOFF] is entitled to the floor.

Mr. GOFF. Mr. President, I note that both the Senator from Missouri [Mr. REED] and the Senator from Idaho [Mr. BORAH] are present. I have been recognized as entitled to the floor, but inasmuch as the affirmative is upon those supporting the majority report of the Committee on Privileges and Elections I feel that I should have the opportunity, speaking for the committee, to close the debate. I would, therefore, at this time like to make such an arrangement as may be

with the two Senators to whom I have referred to permit a division properly of the time and have them precede me with such speeches as they feel advised they desire to make with reference to the case now before the Senate.

Mr. BORAH. Mr. President, speaking for myself, I had not expected to make any speech on the subject. I may take 15 minutes during the 15-minute limit period, but I had not anticipated speaking longer than that. The matter has been gone over so thoroughly and presented on both sides in such great detail that at this time I doubt if anything would be gained by one not on the committee undertaking to cover the ground again. There are two controlling propositions in the controversy, as it seems to me, on which I may speak briefly, but not at length.

Mr. REED of Missouri. Mr. President, I had understood that the Senator from West Virginia desired to speak at this time, and I gave notice that I would follow him. Subsequently I had a conversation with the Senator, in which he very courteously said to me that he was willing fairly to divide the time, a proposition which I very much appreciated, but I had expected the Senator to proceed this morning and that I would follow him. My papers are not exactly in shape, but if I can be indulged long enough to send to my office and the Senator prefers that I should precede him I will do so, because I think his proposition that the burden is upon the majority to make out the case is perhaps sound and that he is entitled to follow me, if, indeed, anything I may say is worthy of his reply.

Mr. GOFF. I think that course would be very agreeable to the Committee on Privileges and Elections, and especially to those signing the majority report. I should appreciate it very much if the Senator from Missouri, who, I understand, is the only one on the minority side who desires to make an extended address, would proceed with his address.

Mr. REED of Missouri. If the Senator will give me time enough to get my papers from my office, I will do so, otherwise I shall have to follow the Senator when he gets through.

Mr. GOFF. That course is perfectly agreeable to the Senator from West Virginia, if the Senate will agree to it.

#### THIRD WORLD'S POULTRY CONGRESS AT OTTAWA, CANADA

Mr. NORRIS. Mr. President, in the meantime I ask unanimous consent to report from the Committee on Agriculture and Forestry favorably, without amendment, the joint resolution (H. J. Res. 213) for participation of the United States in the Third World's Poultry Congress, to be held at Ottawa, Canada, in 1927. I submit a report (No. 570) thereon and I ask unanimous consent for the present consideration of the joint resolution.

The VICE PRESIDENT. Is there objection?

Mr. MOSES. Mr. President, let it first be read for the information of the Senate; or will the Senator state what it is?

Mr. NORRIS. I can explain the joint resolution more briefly than the reading of the report, because the report contains considerable correspondence and several extracts from the President's message.

In March the President sent a message to Congress asking Congress to provide for the participation on the part of the Agricultural Department in an international poultry congress which will meet in 1927 at Ottawa, Canada. This joint resolution provides for an exhibit of the progress and present condition of the poultry industry in the United States to be made by our Government.

Mr. MOSES. Mr. President, may I interrupt the Senator from Nebraska at that point?

Mr. NORRIS. Yes.

Mr. MOSES. Is the message to which the Senator alludes the one which was referred to the Committee on Foreign Relations, following which the Senator from Massachusetts introduced a joint resolution providing for our participation in that congress?

Mr. NORRIS. Yes; I rather think it is. The message was referred, as was the joint resolution offered by the Senator from Massachusetts, to the Committee on Foreign Relations. No objection was made to the resolution there, but in the meantime a similar joint resolution was introduced in the House of Representatives and referred there to the Committee on Agriculture. The joint resolution passed the House and came over to the Senate and was referred to the Committee on Agriculture and Forestry of the Senate.

Mr. MOSES. And the joint resolution has been favorably reported by that committee?

Mr. NORRIS. The joint resolution has been favorably reported, and I will say to the Senator that it also has the approval of the Senator from Massachusetts, who introduced the joint resolution which went to the Committee on Foreign Relations.

tions. I desire also to say that it authorizes an appropriation of \$20,000. I think it only fair to make that statement.

Mr. ROBINSON of Arkansas. Does the joint resolution provide for an appropriation or merely authorize an appropriation to be made?

Mr. NORRIS. The joint resolution authorizes an appropriation of \$20,000.

Mr. ROBINSON of Arkansas. Will the Senator once again state for what the joint resolution provides? There was so much noise in the Chamber I could not hear his statement.

Mr. NORRIS. The joint resolution provides for participation on behalf of the Agricultural Department in an international poultry congress, which is to meet at Ottawa, Canada, in 1927.

Mr. ROBINSON of Arkansas. Is the joint resolution unanimously reported?

Mr. NORRIS. It is.

Mr. COPELAND. Mr. President, is the Senator from Nebraska asking for immediate action on the joint resolution?

Mr. NORRIS. I am asking for immediate consideration of the joint resolution.

Mr. SWANSON. Mr. President, I desire to say in that connection that I think the Foreign Relations Committee favorably reported the joint resolution, which was referred to that committee.

Mr. NORRIS. I have not looked up that matter, but, as I remember, the Senator from Massachusetts, in a conversation with me, said that the Committee on Foreign Relations had not acted.

Mr. SWANSON. I thought that committee had acted. They were favorable to the measure and thought it ought to be adopted.

Mr. COPELAND. Mr. President—

Mr. NORRIS. I yield to the Senator from New York.

Mr. COPELAND. I hope that the request of the Senator from Nebraska for the immediate consideration of the joint resolution will prevail. I doubt if the average American citizen realizes what an enormous business is involved in the poultry industry. In my State we consume \$200,000,000 worth every year. So it is a matter of importance.

Mr. NORRIS. I think it is in size the third industry in the United States.

Mr. COPELAND. I think it is the third.

Mr. SACKETT. It ranks fifth.

Mr. COPELAND. I hope the joint resolution may be considered and passed and that the appropriation may be made.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, which was read, as follows:

*Resolved, etc., That the invitation of the Government of Canada to the United States to send delegates and an exhibit to the Third World's Poultry Congress, to be held at Ottawa, Canada, during July and August, 1927, be accepted.*

Sec. 2. That the President is hereby authorized to designate official delegates to enable the United States to participate in the proposed congress.

Sec. 3. That the Secretary of Agriculture is authorized to prepare and install a suitable national exhibit for display at the proposed congress, portraying in a correlated manner the fundamental features concerning the organization and development of the poultry industry of the United States, including the broad problems of production, distribution, and marketing of poultry and poultry products, and the sum of \$20,000, or so much thereof as may be necessary, is hereby authorized to be appropriated for the purpose of preparing, transporting, and demonstrating such an exhibit.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

#### UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA

Mr. WALSH. Mr. President, on Saturday last the Senate passed the bill (H. R. 5701) to designate the times and places of holding terms of the United States District Court for the District of Montana. I had intended to offer from the floor an amendment to the bill, but I was unavoidably absent at the time. One place for holding court was inadvertently left out. I ask unanimous consent for the reconsideration of the action of the Senate by which the bill was reported to the Senate as amended, the amendment made as in Committee of the Whole concurred in, the amendment ordered to be engrossed, the bill ordered to a third reading, read the third time, and passed.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

Mr. WALSH. Now I ask unanimous consent for the present consideration of the bill.

Mr. SMOOT. I wish to ask if the bill referred to has been transmitted to the House of Representatives?

The VICE PRESIDENT. The Chair is informed that it has not been.

There being no objection, the Senate as in Committee of the Whole, resumed the consideration of the bill.

Mr. WALSH. On page 2, line 3, after the name "Great Falls," in the amendment reported by the Committee on the Judiciary, I move to insert the name "Billings."

The VICE PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Montana to the committee amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

#### SENATOR FROM IOWA

The Senate resumed the consideration of the resolution (S. Res. 194) declaring Daniel F. Steck to be a duly elected Senator of the United States from the State of Iowa for the term beginning March 4, 1925, reported by Mr. ERNST from the Committee on Privileges and Elections.

Mr. REED of Missouri. Mr. President, I wish to confine my remarks to two or three major propositions and I shall endeavor to limit myself so as to give the Senator from West Virginia [Mr. Goff] as much time as I shall occupy.

Mr. President, it seems to me that in approaching this question all of us ought to have but one desire, and that is to decide the case according to the law and the evidence. I have no patience with any argument or talk based upon matters of political consideration; indeed, I think this is a case that peculiarly is removed from the realm of political advantage, for I do not know what we would gain as Democrats by trading off a man who investigated Daugherty and Fall and others for a man who steadfastly criticized that investigation, who denounced it in his campaign in the State of Iowa, and who evidently held to the view that the investigation should not have been made at all, or, if undertaken, should have been made in some other way. But politics or political advantage or disadvantage is not to be here considered. We are to decide which one of these two men the State of Iowa elected to the high office of Senator. We are to decide it without passion, without prejudice, and without favor.

I regret exceedingly that upon this matter I find myself in antagonism with Senators for whom I entertain the highest regard and respect and particularly that I find myself in opposition to the views expressed by the Senator from Georgia [Mr. GEORGE] and the Senator from Arkansas [Mr. CARAWAY].

Mr. President, we are here governed by the Constitution of the United States and by the law of Iowa. If we do not follow the Constitution and if we do not follow the law of Iowa, we then are substituting our will for the legally expressed will of the people of the State of Iowa. I can find no warrant for that; and I desire to call the attention of the Senate merely by way of preliminary to the pertinent provisions of the Constitution:

The Senate of the United States shall be composed of Senators from each State—

And as it originally read—

chosen by the legislature thereof—

And as it now reads—

elected by the people thereof.

They, not the Senate, choose the Senators.

Then under the heading of qualifications the Constitution provides:

No person shall be a Senator who shall not have attained to the age of 30 years, and been 9 years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The times, places, and the manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law—

Not by resolution of the Senate; but "by law"—

make or alter such regulations, except as to the places of choosing Senators.

Each House shall be the judge of the elections, returns, and qualifications of its own Members.

We have reserved the right in the Constitution to pass upon the qualifications, and those qualifications are set forth in the Constitution and are our guide. That is all that section 5 means as it applies to qualifications. Another right we have is to decide who is elected. Elected how? Elected under and pursuant to the laws of the State that is authorized to pass the laws. Congress can not interpose its will; Congress can not interfere with the State's right except in one way and that is by the enactment of a law—not by the voice or vote of one branch of the Congress.

I say, with all the respect in the world for the opinion of others, that if the Senate undertakes to say that a man is elected who is not elected according to the laws of the State from which he comes, then the Senate has usurped the powers and functions which the Constitution has placed solemnly in the people of the State who send here the man seeking a seat in this body.

It is as much an act of usurpation as if we were utterly to ignore everything done in the State and proceed ourselves to declare elected some man who might not even have been voted for in his State.

When the State of Iowa comes to act, it passes a law. It prescribes the rules and regulations under which the election shall be held. It fixes the qualifications of the voter. It tells the kind of ballot he shall cast. It tells how he shall mark that ballot. It tells the manner in which the ballot shall be preserved. It tells how the ballot shall be counted. It tells how the returns shall be certified and finally ascertained. So that with all of those questions the State of Iowa alone is authorized to deal; and if we can interfere in any respect and say that, in our opinion, the law ought to have been different, or that, in our opinion, a ballot ought to be counted which was not cast in accordance with the law, then we are substituting the will of one branch of Congress for the will of a sovereign State, and we are doing it in the teeth of the Constitution of the United States.

I therefore say that the law of Iowa must be followed in this matter.

Mr. CARAWAY. Mr. President, may I ask the Senator a question?

Mr. REED of Missouri. I am not going to decline to yield to my brother Senators; but, as I have limited my time, I wish that I might simply answer a question without going into an argument.

Mr. CARAWAY. The question I desire to ask is this: Does the Senator mean that every ballot should have been scrutinized under the law of Iowa and only legal ballots counted, and that if there was any irregularity that should bar the ballot?

Mr. REED of Missouri. I think the ballot must be cast in accordance with the law of the State of Iowa.

Mr. CARAWAY. Then, if I may ask the Senator just one more question, does the Senator realize that if that rule had prevailed Steck would have won by 2,740 votes?

Mr. REED of Missouri. That he would have won is the Senator's construction.

Mr. CARAWAY. The Senator has not seen the ballots, has he?

Mr. REED of Missouri. Oh, no. I am laying my premise here; I think it is perfectly sound, and I do not agree at all with the conclusion of my good friend from Arkansas.

Mr. President, much has been said about the intent of a voter. When the law expressly states how the intent shall be expressed you must follow that law, or if you do not you are in a maze of absolute uncertainty.

It is true that there is a limited field within which the intent may be ascertained by the act of the voter himself. For instance, let us suppose that a man wrote in the name "Brookhart" instead of writing Brookhart's initials. As there was only one Brookhart running, there would be no difficulty in ascertaining who was meant. I am speaking now of the way in which the ballots shall be cast, the way in which they shall be counted, and how they shall be marked. Those things are matters of substantive law, and we can not set them aside without saying that our will is superior to the law of the State and without going into a perfect labyrinth of speculation and of guesswork.

Mr. CARAWAY. Will the Senator pardon me just one minute?

Mr. REED of Missouri. Yes.

Mr. CARAWAY. The law of Iowa declares that—

Mr. REED of Missouri. I will pardon the Senator for a question but I can not pardon him for an argument.

Mr. CARAWAY. I do not want to make an argument.

Mr. REED of Missouri. The other day the Senator spoke when his time was unlimited, and I have agreed with the Senator from West Virginia [Mr. Gorr] to limit my remarks; so I must hurry.

Mr. CARAWAY. I just want to suggest that the law says the name shall appear but once upon a ballot, and yet where Brookhart's name is written in it appears twice on every one of those ballots; and yet the Senator counts those votes.

Mr. REED of Missouri. Oh, Mr. President, that clause of the law clearly did not cover any such case as the Senator has put.

Mr. CARAWAY. When it said "twice," I thought it meant it.

Mr. REED of Missouri. You can give an absurd construction to the Lord's Prayer if you want to, but it is hardly necessary to do it. That related to the printing of the ballots, of course.

Mr. CARAWAY. May I ask the Senator what makes him say that?

The VICE PRESIDENT. Does the Senator from Missouri yield to the Senator from Arkansas?

Mr. REED of Missouri. I will yield for a question, and I would yield for an interminable and endless argument if it were not that I have agreed with the Senator from West Virginia to give him some time, and I am going to keep the faith.

Mr. President, there is another thing that I want to do. The first thing that I want to call attention to is the law of Iowa. There is a misapprehension created here by the arguments that have been made.

The laws of Iowa may be peculiar, but there they are. If a man wants to vote, let us say, a straight Republican ticket, he can do so by putting a mark in the circle at the top. That is one way to vote; or he need put no mark in the circle at the top, and can put a mark in the square opposite each name. That is another way in which he can vote a straight ticket. There is a third way in which he can vote a straight ticket. He can place a cross in the circle at the top of the ticket, and also place a cross in any or all of the squares beneath the circle. That is the plain language of the statute, and I want to emphasize it so that everybody will understand it. The third way, if you want to vote a straight ticket, is to place a cross in the circle at the top, and then you can go down the line, under the absolute letter of the statute itself, and place a mark opposite one of the names or two of the names or two-thirds of the names or all the names but one, and it is still a straight ticket. That is the law of the State of Iowa, and no man who has read that law will challenge my statement.

There is a method provided whereby, for example, a Republican so desiring need not vote the entire ticket and yet not vote for any Democrat. All the names he does want to vote for are on that ticket, but there are also some he does not want to vote for. The law in that respect reads:

If the names of all the candidates for whom the voter desires to vote appear upon a single ticket but he does not desire to vote for all the candidates whose names appear thereon, he shall place a cross in the square opposite the name of each such candidate for whom he desires to vote without making any cross in the circle at the top of such ticket.

To illustrate: If a Republican in Iowa desired to vote for every man on the Republican ticket but Brookhart, under the law he made a cross in the square opposite each name on the Republican ticket except the name of Brookhart, but he did not make a cross in the circle at the top of the ticket. This would then have been a straight Republican vote with the exception of Brookhart and there would be no vote cast either for or against Brookhart.

On the other hand, if the voter did place a cross in the circle at the top and then proceeded down the ticket, making a cross opposite the names of all of the candidates except Brookhart, the vote would be counted for Brookhart because the cross in the circle in itself under the law constituted a vote for every man on the ticket whether the cross appear opposite the name or not. When the cross is made in the circle at the top, then the cross made opposite the names of any candidate on that ticket is mere surplusage.

Again, if this same Republican desired to vote all of the Republican ticket except Brookhart and desired to vote against Brookhart, he could employ either one of two methods. He could place a cross in the circle at the top of the ticket without making any cross opposite the names of the candidates on the Republican ticket. He could then go over to the Democratic ticket and make a cross opposite the name of Steck. This would constitute a vote for Steck. Or he could employ the second method, viz, he could omit any mark in the circle

at the top of the Republican ticket and go down the Republican ticket, placing a cross opposite each candidate except Brookhart and could then go across to the Democratic ticket and make a cross in front of Steck's name. This would constitute a vote for the entire Republican ticket except Brookhart and would also constitute a vote for Steck.

Mr. President, there is not any question on earth about that being the law of the State of Iowa. No man can rise in his place and successfully challenge any statement I have made.

There is another rule by which we are to determine this election, namely, presumption and burden of proof. The official count gave to Brookhart a majority of 755 votes. He has been duly commissioned as a Member of this body. The absolute presumption of law is that he is here with good right and title, and that presumption of law must stand until it is overcome by competent evidence, and if the evidence has not been produced we have no more right to seat a man who has not proven his title to the seat than we have to seat any other stranger. The question of determination of this evidence was solemnly submitted to the Senate for decision on its merits.

Mr. President, we can not substitute for proof either our own guess or the admission of the contestee or the stipulations of the contestee. Nor can we decide the case without competent evidence, even though the contestee has failed to make timely objections. His failure can not supply the lack of proof. Nor can his failure confer title to the office of Senator upon a man who fails to prove his right to a seat here. Men get here because they are elected in accordance with the law, not because of a technical omission or failure of their opponents. Is it necessary to argue that proposition?

Mr. NEELY. Mr. President—

The VICE PRESIDENT. Does the Senator from Missouri yield to the Senator from West Virginia?

Mr. REED of Missouri. For a question; yes.

Mr. NEELY. In view of the Senator's sweeping statement, will he not permit me to inquire if he thinks that Lorimer and Newberry became Members of the Senate according to law?

Mr. REED of Missouri. I do not think they got here according to law. I say that men get here because they are elected according to the law. They can not get here because of a stipulation or agreement, or the failure of their opponents, or anybody else, to present evidence, or to object in time.

Mr. NEELY. Then it does not follow, from the Senator's earlier observation, that he means that everyone who comes here with a certificate of election has necessarily been legally elected.

Mr. REED of Missouri. I have never made any statement susceptible of that kind of construction. I am sure the Senator will bear me out in that.

Mr. NEELY. The Senator made the broad statement that one "gets here" according to law.

Mr. REED of Missouri. Yes, and no man is elected according to law who buys his way into this body. He is elected contrary to law.

Mr. NEELY. I, of course, concur in that opinion. My purpose in interrogating the Senator was to ascertain whether his broad premise means that when one presents his certificate of election to the Senate, as Senator Brookhart has done, a conclusive presumption of the validity of the election of the person holding the certificate arises.

Mr. REED of Missouri. I made no such statement. I made the statement—and if the Senator will follow me closely he will not be in error, as he is this time—that a man with a certificate comes clothed with the presumption that he is here according to law, but that presumption may be rebutted by evidence, and only by evidence, and not by stipulation or agreement, and not by any technical failure to make an objection at a particular time.

Mr. NEELY. Does the Senator contend that there is not sufficient evidence in this case to justify the Committee on Privileges and Elections in finding that Mr. Steck was duly elected a Member of the Senate?

Mr. REED of Missouri. I will come to the question of evidence later on. I claim that there is no evidence that will warrant the finding of the majority of the committee.

Mr. ASHURST. Mr. President, will the Senator yield to me?

Mr. REED of Missouri. I yield.

Mr. ASHURST. It becomes obvious that those who assert that a stipulation can put Mr. Steck into the Senate, by irresistible logic must admit that a stipulation, ergo, would have put Mr. Lorimer into the Senate.

Mr. REED of Missouri. Yes; and that is a very good illustration. Suppose there had been a contestant in the Lorimer case, and he had come here and solemnly admitted that Lorimer was here lawfully, and suppose the evidence before the Senate

had been just what we afterwards found it to be; what would we have done with that sort of an agreement except cast it out as utterly unworthy of consideration?

The right to hold the office can only spring from an election by the people. It can not be conferred by the mistake of Brookhart or by his failure to make an objection. The public is the real party, not Brookhart or Steck. They are but two individuals. But the question we must settle is the right of a man to sit as a member of a legislative body which controls the affairs of a great nation, whether he is of right entitled to be a part of the Government of the United States; and that question can not be settled on the failure of some individual at a particular moment to make an objection. I shall come to the question of the evidence after a while.

To overcome the presumptions aforesaid, competent evidence must be produced. Absent frauds; this may be done by counting all of the ballots or by counting enough ballots to demonstrate that if all of the ballots were present and counted against the contestant he would, nevertheless, be elected.

Perhaps I can make that somewhat clearer. It must be proven that all of the ballots have been produced, and that by a count of those ballots it is found that the contestant is entitled to the seat, or, if there are any ballots absent, the number must be small enough so that if they were all counted for the contestee the contestant would win anyway. To illustrate, if there were 5,000 ballots short, and the contestant had, on the ballots that were produced, 6,000 majority, then manifestly the 5,000 ballots would be immaterial, because they would not change the result.

Mr. ASHURST. Mr. President, will the Senator yield there?

Mr. REED of Missouri. After I finish the sentence. But if the contestant, on the face of the ballots, wins by only 1,000 votes, and there are 5,000 ballots absent, it can not be said that the ballots show he is elected, because there is a failure to produce the other 5,000 ballots, and they might change the result, the presumption being that the man is rightfully in his place, he having the official count back of him. The presumption is that those ballots were favorable to him, and it is a conclusive and absolute presumption when the evidence is not here to rebut it.

Now I yield to the Senator from Arizona.

Mr. ASHURST. I thank the Senator, but it is unnecessary now, because the Senator has so clearly stated the rule that I can add nothing to what he has said.

Mr. REED of Missouri. Now, I come to another proposition, to which I invite the attention of the lawyers in this body particularly. Before the ballots can be counted, before they can be received in evidence at all, before they become competent evidence for any purpose, there must be strict proof that the ballots have been properly preserved. There must be a prima facie showing that they have not been tampered with, that they have been kept in the proper custody. If those matters are not shown, then there are only fugitive pieces of paper, not properly avouched, and they can not be received in evidence under the decision of any respectable authority in the United States. That is settled by a large line of decisions, and I can cite the authorities if Senators want them; it is so stated by McCreary on Elections, by Cooley on Constitutional Limitations, and by a very well-reasoned case in the State of Arkansas (50 Ark. 1. c. 94), and by a multitude of other cases, all to the same import. There must be a prima facie showing. The committee is in the same situation that a man is in who comes into court basing his case upon a written document. Before he can introduce a written document he must prove that it is signed by the parties, or he must show there was such a document and that it is lost. He must authenticate the instrument. These three-quarters of a million pieces of paper called ballots can not be counted as such ballots until there has been preliminary proof that they were the ballots cast in that election. No such proof was offered in this case. The only thing that anywhere nearly approximates it is a certificate by the auditor that the inclosed ballots were sealed by him and sent here. There is no evidence that they are all the ballots. There is no evidence that they were delivered to him in the manner and form provided by law. There is no evidence whatever that ballots have not been lost, that ballots have not been destroyed, that ballots may not have been tampered with, or that the ballots were held in strict custody as provided by the laws of Iowa.

When we come to technicalities, which are appealed to so vehemently here against Brookhart, I interpose, not a technicality, but a substantive principle of law that has absolutely not been met in this case. Mr. Steck simply failed to prove his case in that regard. How he came to do it, with the general attorney of the Ku-Klux Klan to represent him, I do not know, but I know that if I had been trying this case, or if my dis-

tinguished friend from West Virginia had been trying this case, the first thing we would have thought of when we brought in the ballots would have been to prove their custody, to prove that these were the ballots, and that these were all of the ballots; and if any of them were missing, we would have accounted for the missing ballots; and we would have proceeded to show how the parties voted, if it had been possible to do so. There is an absolute failure of proof in that behalf.

Mr. NEELY. Mr. President, will the Senator yield?

Mr. REED of Missouri. I yield for a question.

Mr. NEELY. If the Senator had been a member of the Committee on Privileges and Elections, and the contestant and the contestee had brought 989,000 ballots to the committee and in effect certified that those ballots had been duly cast, and that they were the source of the contest we are considering, would the Senator, on his own motion, have gone to Iowa and taken proof to establish the fact that there had been no tampering with the ballots, if no irregularity in connection with them had been suggested?

Mr. REED of Missouri. Mr. President, there was a suggestion of that sort, to begin with. In the next place—

Mr. NEELY. I challenge the Senator to find such suggestion in the record.

Mr. REED of Missouri. I will show it before I get through, and show it conclusively by the record. But, in addition to that, these people never came here and made any such statement as that "these are the ballots cast in this election."

Mr. NEELY. Not in words—

Mr. REED of Missouri. No; and not in any other way.

Mr. NEELY. The record shows that they did.

Mr. GEORGE rose.

Mr. REED of Missouri. I must insist that I can not argue this with Senators. I will yield for any proper question. I would argue it with Senators, but I promised the Senator from West Virginia to give him time to close, and I am going to try to do that.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. REED of Missouri. I yield to the Senator.

Mr. GEORGE. I merely wanted to ask the Senator what his attitude would be if Brookhart himself came in and said, "We desire that you count these ballots," and helped us to count the ballots.

Mr. REED of Missouri. I did not hear the question.

Mr. GEORGE. What would have been the Senator's attitude if Senator Brookhart himself had come to the committee and asked if we would meet and count these ballots and had actually himself participated in the count of the ballots?

Mr. REED of Missouri. My attitude would have been this: That the burden of proof was upon the contestant, and that he must supply that proof. If he did not supply that proof, when he got through I would have told him that he had not proven his case.

Mr. GEORGE. Then you would not have allowed Senator Brookhart to count the ballots?

Mr. REED of Missouri. I would have allowed anybody to stand, under proper surveillance, and count the ballots, if he wanted to, and he might offer them until he was black in the face, but, unless there was the showing required by law as to the validity of the ballots, I would not have accepted them as against the official return.

Mr. GEORGE. Then the Senator would have permitted him to count them and would not have bound him by what he found?

Mr. REED of Missouri. I am not binding him. I am talking about binding the Senate. I care nothing for Brookhart in the matter, and I care nothing for Steck. Mr. Brookhart is here with a certificate of election, with a certificate from the authorities of his State that he is entitled to his seat, and the burden is upon Mr. Steck under every decision of every court to prove his right to the seat.

Mr. GEORGE. Let me read to the Senator just one sentence. That is all I ask to read from an Iowa case, the case of De Long against Brown, One hundred and thirteenth Iowa:

The preliminary proof, unless waived, is essential to the competency of the ballots.

If a contestee can not waive it when he himself goes and counts the ballots, then how could it be waived?

Mr. REED of Missouri. I say it can not be waived, and I say that in this case it was not waived as to the vital issues to which I now come.

Mr. President, there are three principal disputes in the case. The first one is that 1,323 straight Republican ballots, where the circle was marked and some of the squares on the ticket, but not the square in front of Brookhart's name, were not counted for Brookhart. Here I want to invite the especial

attention of the Senator from Georgia. Class 3 of the classes which the lawyers in the case made out were votes where the voter marked a cross in the circle at the top of the Democratic ballot and then, proceeding down the ballot, marked a cross in the square in front of certain of the names on the ticket, but failed to put a cross in the square in front of Steck's name. Of these votes Steck got 1,163 and Brookhart conceded them to him, did he not?

Mr. GEORGE. I did not understand the Senator. I thought the Senator was discussing the 1,344 votes.

Mr. REED of Missouri. Class three ballots, as specified by the lawyers, are ballots where the voter marked a cross in the circle at the top of the Democratic ballot and marked a cross in the square in front of certain of the names of the candidates on the Democratic ticket, but failed to put a cross in the square in front of Steck's name. Of these votes there were 1,163 in favor of Steck and 14 in favor of Brookhart.

Mr. GEORGE. I will say to the Senator from Missouri that I do not recall the particular classification 3 because I have never bothered myself about any of those votes, agreeing with the Senator from Missouri, so far as that goes, on how those votes should be counted.

Mr. REED of Missouri. I know the Senator did, and I wanted to get the Senator's statement on this point. My understanding from the record is, and if I am wrong I will be corrected right now, I hope, that when they came to count those ballots they found of the Democratic ballots that there were 1,163 that had a cross in the circle at the top and then a cross in the square opposite the names of certain candidates, but there was no cross opposite the name of Steck; that Steck's representatives claimed the benefit of those ballots and that Brookhart conceded them to Steck and 1,163 of them were counted for Steck, and only 14 for Brookhart.

Mr. CARAWAY. Mr. President, just to show the inconsistency of that statement, how could there be 14 for Brookhart with no cross in front of anybody's name, when there was a cross in the circle at the top of the Democratic ticket? It would answer itself that there could be no such ballot as that, and there was not any such ballot as that.

Mr. REED of Missouri. We ought to be able to agree on the facts.

Mr. CARAWAY. We could.

Mr. REED of Missouri. The Senator wants to say something unpleasant?

Mr. CARAWAY. If that is unpleasant, let it go for an unpleasantness.

Mr. REED of Missouri. Certainly; we will let it go any way the Senator wants to.

Mr. CARAWAY. Absolutely. I am tired of this everlasting trying to lecture somebody about being unpleasant.

Mr. REED of Missouri. The Senator has a perfect right to entertain a weary feeling any time he sees fit.

Mr. CARAWAY. I am going to exercise that right.

Mr. REED of Missouri. I decline to yield to the Senator any further.

Mr. CARAWAY. The Senator need not do it, because I am tired of that kind of lecturing.

Mr. GEORGE. Mr. President, I hope the Senator from Missouri will yield to me.

Mr. REED of Missouri. I do. I asked the Senator from Georgia a civil question and I know I am going to get a civil answer.

Mr. CARAWAY. If that has application to me, the Senator will have to address me and not somebody else when he wants to talk to me.

Mr. REED of Missouri. I shall have to call the Senator from Arkansas to order pretty soon.

Mr. CARAWAY. Of course.

Mr. GEORGE. The third class of ballots were conceded by both Steck and Brookhart, and there were 1,163 votes claimed by and conceded to Steck and 14 claimed by and conceded to Brookhart. The challenge, whatever it was in that particular class of votes, was identical; that is to say, the challenge leveled by each party was upon the same kind of ballot.

Mr. REED of Missouri. Those were 1,163 votes on the Democratic ballot where there was a cross in the circle at the top and where there were crosses opposite certain names on the Democratic ticket, but there was no cross opposite Steck's name. Mr. Steck desired to have them counted for him. Mr. Brookhart conceded it was fair to count them for him and the challenge was withdrawn.

Now I come to class 5; and what were the ballots in that class? They were ballots where the voter had marked a cross in the circle at the top of the Republican ticket and also had marked a cross opposite the names of certain Republican candidates, but failed to put a cross in front of Mr. Brook-

hart's name or Steck's name. The two cases were identical. There is not a hair's shadow between them. Of these votes there were 3,834, but Mr. Steck withdrew his challenge to all of them except 1,344. But why did he let his challenge stand as to the rest of them, amounting to 1,344? The cases were identical except in this particular, that as to those 1,344 votes on which he stood on his challenge most of them had a cross opposite all of the names but Brookhart's, but there was none opposite his name. Nevertheless the principle is identical. We can not cure the defect, if it was a fatal defect, by making an admission as to two or three or four other names.

Mr. Steck, having taken the advantage of Mr. Brookhart's withdrawal of his challenge, having had counted for himself these names that were on his ticket marked with a circle at the top and no cross opposite his name, proceeds to insist on a challenge against Brookhart for exactly the same kind of votes that appear in favor of Brookhart. Talk about waiver! Talk about estoppel! Talk to me about fair dealing on the part of a man who takes the advantage of every vote that is cast for him where there is a circle at the top and none opposite his name, and then denies the application of the same rule to his opponent and wants to cut him out of thirteen hundred and odd votes! No wonder the Senator from Georgia, who is always a fair man—he may not always be right, because none of us are, but he wants to be fair—counts those 1,323 or 1,344 votes for Brookhart. When he takes it out of the case with those facts back of his decision to which I have just called attention, what man is there in the Senate who has the temerity to say when we are deciding the rule the question of who was elected, not on what Brookhart did or what Steck did, that we will throw out the same votes that were counted for Steck, exactly the same character of votes?

That reduces the case down to a question of 74 or 75 votes. That is the end of those thirteen hundred and odd votes according to my judgment. I want to discuss the question as dispassionately as I am able to. I certainly have not any feeling in it—and I want to say to my friend from Arkansas that I do not think there ought to be any feeling between him and me about it.

Mr. CARAWAY. Mr. President, if the Senator will pardon me, the Senator is exceedingly wrong about his statements; but he did not want me to correct him about them and showed a good deal of impatience about it, and I thought the Senator was trying to lecture me.

Mr. REED of Missouri. It was just the Senator's manner.

Mr. CARAWAY. I am not much inclined to be lectured by anybody if I can help it.

Mr. REED of Missouri. I have never tried to lecture the Senator.

Mr. CARAWAY. Then I just misunderstood the Senator.

Mr. REED of Missouri. Now, we are down to 76 votes, and according to another set of figures to 26 votes. Let us see what we can do about those votes.

There are five precincts in which the votes varied materially from the poll books. The official count was taken in one of those precincts. There were one hundred and ninety-odd votes short, and therefore the judges said or the counters said or somebody down here said: "We will have to take the official count; the ballots are not here." That was logical; that was right; it was perfectly manifest that if the ballots are not there there is no evidence to dispute the official count unless we put in extraneous evidence, which was not done in this case. By taking the official count in Winterset Township over the ballots that were there Mr. Steck gained 34 votes. All right. There was another township, the second ward.

Mr. CARAWAY. Mr. President, will the Senator pardon me just a moment? I am sure the Senator does not want it to go into the Record that Mr. Steck gained 37 votes in the first precinct of Winterset, because the official count was taken there?

Mr. REED of Missouri. That is what I say. The official count was that much better than the votes that were in the box.

Mr. CARAWAY. I thought the Senator stated it the other way.

Mr. REED of Missouri. That is the way I stated it.

Mr. CARAWAY. I know the way the Senator stated it, and I think the Senator was in error.

Mr. REED of Missouri. Mr. Steck gained by virtue of the official count being taken in that precinct, but then we go over to Emmet County and there turns up the second ward in Estherville Township, where there are 20 ballots missing. What are we going to do there? Again the ballots are not there. The committee took the official count before and the parties agreed to it; Steck agreed to it, if that counts for anything; Brookhart agreed to it. The committee established

there the rule that where the ballots were missing they would take the official count, and rightly, because the presumption is that the official count is correct, and when the ballots are not at hand it is certain that there is no evidence to overcome that presumption. They did not take the official count as to Estherville. Then they hunted around and found in a separate package 34 more ballots which the auditors sent down in a separate package, stating that they belonged in that precinct. Clearly they had not been kept together; clearly the law had not been observed; clearly there was every kind of an opportunity for tampering with those ballots in the State of Iowa before they reached Washington. The committee proceeded in that case to count the ballots and that made a difference against Brookhart of 61 votes. If they had taken the official count, as they did in the other case, he would have had 61 votes more than he is given. That wipes out nearly all of the 76 majority for Steck.

Let us go to Bear Grove Township in Guthrie County. There were 20 ballots missing. Again the same situation was presented; and, again, instead of taking the official count, they proceeded to count such ballots as were there. What about the missing ones? For whom were they cast? That made a difference against Brookhart of 21 votes, and the whole 76 votes for Steck are gone; they are wiped out, sir.

Again we come to Center Township, Wapello County, the ninth precinct of Ottumwa. There are 22 ballots missing. Again they refused to take the official count; they counted the ballots and disregarded the missing ballots. That made a difference against Brookhart of 41 votes. Give him those and the 76 votes for Steck have been entirely overcome and there is a majority for Brookhart.

Again take Jackson Township in Lee County, the second precinct. There are 12 ballots more than names on the poll book—12 ballots too many. Somebody stuffed the ballot box in that case on the face of appearances. The committee counted those ballots without any evidence as to them except that the poll books showed they should not be there, but they found the ballots in the package. That makes a total that Brookhart lost by virtue of the application of a rule one way against him and then reversing the rule and working it against him again when the circumstances were reversed. It makes a difference of 144 votes. I can not, to save my life, understand how, in the face of a situation of that kind, any man can say for a minute that Brookhart has not overcome the 76 majority for Steck, of which the distinguished Senator from Georgia [Mr. GEORGE] speaks.

Mr. President, were the ballots kept sealed? Had they been kept in accordance with the law? There were 67 precincts where the containers were unsealed. If the official count had been taken in those cases, Brookhart would have gained 309 votes over what were given to him. Those 309 votes would have settled this case, unless we throw out the 1,323 votes which the Senator from Georgia refuses to throw out, in which he is manifestly right.

Mr. President, what are you going to do with a case of that kind? Are you going to say because Mr. Steck said he did not want the votes counted when they were 192 short—and Mr. Brookhart conceded that was fair—that afterwards you will permit Mr. Steck to reverse himself and say, "When there are ballots short, I now want the votes counted in these boxes, because they are favorable to me"? Will that enable us to get the truth? Will not the Senate apply the rule one way or the other? Will the Senate say that where the votes are not in the box they can not be counted, but the official returns must be taken in all cases, or will the Senate adopt the other rule and say, "Count all the ballots and disregard the official returns altogether"? This is the cold record in this matter. I have been through the entire record.

There is another proposition here. Remember, now, how they vote in Iowa. Before a voter can get a ticket he must call for it and give his name, and then his name is written in long-hand in a book furnished the judges for that purpose. When he votes he votes a ballot on which the judges have put their initials, and that is a solemn book register of that vote. Therefore the number of ballots in the box ought to tally with the names in the book. But, sirs, if there is any variance, clearly the book ought to be the better evidence than the absence of a fugitive piece of paper—a single piece of paper which either might be lost or something else substituted for it. There is the book solemnly written out. It is a good deal like the books of a grocery store. Which is the better and most satisfactory evidence of the fact, that a man is charged on the books or the fact that the grocery can not find a particular ticket for a particular sale—a ticket that may have been stuck on a spike. So I say when we compare the books with the votes we find it is true that there are 3,500 votes in the State missing. For

whom were they cast? There is no evidence as to that; nobody knows. The presumption, therefore, is that the official count is correct and that the judges, when they counted the ballots, counted only the ballots which were there, and that the official count must be taken, for there are 3,500 votes gone; nobody knows anything about them, and the presumption is that the official count is right and that Brookhart is here properly. Who is there who will say we are then to indulge the presumption that these 3,500 votes would not have altered the election when we are down to a difference of 76 votes, and the burden was upon Mr. Steck to prove it? I say that if this case had been tried closely, and tried in a court of law, it is my humble judgment that the lawyers would have proceeded to have accounted for those 3,500 votes by some sort of evidence, but not a word of evidence was introduced in this record to account for them. The record shows that they went into the box; they are not here now; and I say, that being the case, that Mr. Steck must show a majority of more than 3,500 so that he can say, "If you counted all those votes for Brookhart it would not change the result."

Now, Mr. President, I come to the question of the alleged stipulations. I am absolutely astounded to find the claims made which have been made in this case in regard to the stipulations. First, let us see what the duty of the committee was. Turn, if you please, to the resolution authorizing the Committee on Privileges and Elections to act. That resolution did not direct the committee to find out what the parties to the contest wanted; it directed the committee to examine the facts, to count the ballots, to ascertain the truth, and to report all of the facts to the Senate.

What happened? On July 20, 1925, there was some sort of stipulation made to bring the ballots to Washington; but, if Senators who remain to listen to this case will give me their attention, that stipulation did not provide an agreement that the papers that might be sent in were the ballots or that they were all the ballots. It was simply stipulated that the ballots should be sent in. That is on page 54. On January 6, 1925, Steck filed his contest. In March, 1925, Brookhart answered. On July 20, 1925, the subcommittee met; and, Mr. President, anyone who will read the proceedings of that subcommittee will ascertain that the chairman of the subcommittee called in the lawyers on each side and, in substance, said to them, "We have a force here to count these ballots, and, if there is no objection, we will send them to count the ballots." The ballots were to be brought here under a stipulation which entitled both parties to be present and required a joint certificate as to the verity of the ballots by the auditors and by the representatives of the respective parties.

Subsequently the parties waived the right to have their men present; but they did not waive the certificate of the auditor that the ballots, when he sent them, were in the condition in which he received them. There was not a word of waiver of that kind; but, if they had waived it all, the situation then would have been that there was an agreement to send in the ballots. What ballots? The ballots cast at the election; not a part of the ballots; not something in addition to the ballots, but the very ballots cast at the election. That does not involve, on the part of the lawyers or on the part of the contestant and contestee, any admission that the ballots are valid, any waiver of a right of challenge or any concession whatever of that kind.

The ballots were brought in here, and then what happened? The next thing was that these gentlemen proceeded to their count—these men who were there simply to make the count, authorized by the committee to do that. A subpoena was sent out—it had been sent out before—for the auditors to bring in these ballots. The proceedings were informal. On page 67 of the record I find this, and I want to impress it upon Senators who have suddenly invoked the rule of technicalities:

Mr. MITCHELL. Mr. Chairman, I assume that this hearing is more or less informal, and that whatever denials and affirmative matter we have entered here as defense will be considered as though not withdrawn now.

The CHAIRMAN. Oh, yes; the proceedings are informal. You do not have to observe the steps you would in a court. You are losing no right by what is done.

The proceedings were informal. Up to that time these men had been off there counting the ballots. There was no committee to which to appeal. The committee was not in session. The committee itself was not counting the ballots. The committee was to meet thereafter and consider the result of this count and any other evidence that it might be proper to bring in.

When Mr. Mitchell asked the question:

I assume that this hearing is more or less informal, and that whatever denials and affirmative matter we have entered here as defense will be considered as though not withdrawn now—

The Chairman said:

Oh, yes; the proceedings are informal. You do not have to observe the steps you would in a court. You are losing no right by what is done.

In that light this case proceeded—an informal case.

On December 3 the committee met, and Mr. Turner was put on the stand. Prior to that, I believe, or immediately subsequent, a great deal of this record is taken up with statements as to what the committee in Iowa did to Brookhart, and what the newspapers printed. Nearly all of the hearings that we have printed here are confined to that sort of stuff.

The committee met. Mr. Turner, the chief accountant, was put upon the stand, and he testified that he had not examined the ballots, but that he took the word of the examiners. That appears on page 71. His evidence, therefore, was hearsay evidence, and ought to have been excluded.

Then Mr. Blair Coan came in. It appears from Mr. Blair Coan's statement that he had been back of this movement against Brookhart, and that he was there to punish Brookhart because Brookhart was one of the men that had investigated the Daugherty corruption.

Mr. GEORGE. Mr. President, I hope the Senator will not inject that into this contest. Any evidence of Blair Coan was put in on the contest filed by the regular Republican Committee of the State of Iowa against Senator Brookhart. That we dismissed.

Mr. REED of Missouri. I understand that you dismissed it.

Mr. GEORGE. That is not in Steck's contest.

Mr. REED of Missouri. But you received the evidence.

Mr. GEORGE. We received it in their contest; not in the Steck contest.

Mr. CARAWAY. Mr. President, I have the ballots in class 3, and I am sure the Senator wants to be correct about it. The class 3 ballots were exactly like the 2,240 votes under class 5 which were conceded to Mr. Brookhart. There is not a single ballot in class 3 and class 5 that were alike that the attorneys did not agree upon and that we passed upon exactly alike. I have the ballots right here.

Mr. REED of Missouri. I shall have to ask the Senator—

Mr. CARAWAY. Of course, if the Senator does not want the information, he can exclude it; but the fact is—

Mr. REED of Missouri. I am not trying to exclude anything except begging the Senator to understand that I must yield the floor in a few minutes.

Mr. CARAWAY. The fact is as I have stated. I have seen the ballots. The statement that classes 3 and 5 were alike is incorrect.

Mr. REED of Missouri. Well, that is my information.

Mr. CARAWAY. Well, it is mistaken.

Mr. REED of Missouri. Very well.

It is admitted, sir, that the ballots from 67 of these precincts came in with the seals broken, and it is admitted that Brookhart challenged every one of them. That is not all. So far from Brookhart conceding the validity of those ballots or waiving his right to challenge, I say he made the challenge the first time it could be made. You could not expect a man to go down with a lot of 30 or 40 clerks, men and women, engaged in counting ballots, and stand down there and make his challenges. It was the duty of these people to note any irregularities to which attention was to be called, but finally this committee was to decide the merits of every question involved in this evidence.

The PRESIDING OFFICER (Mr. ODDIE in the chair). Will the Senator suspend while the Chair makes the announcement that he understands that the Senator's time will be up in five minutes?

Mr. REED of Missouri. There is no absolute time limit, but I am going to treat the Senator from West Virginia [Mr. GORF] fairly.

I say that this lawyer for Mr. Brookhart did preserve his rights. I say he preserved them at the only time he could preserve them, when he was before the committee. Then he made his objection. An objection before that, to a counter who had no authority to rule upon it, would have been a puerile thing, except as a mere record of the fact that he made a specific objection.

On page 195 of the record I find this is laid down:

Senator GEORGE. Before we begin, Mr. Mitchell, may I ask, did the supervisors and the clerks tabulate the returns—tabulate their work?

Mr. MITCHELL. Yes, sir.

Senator GEORGE. Is that available, here?

Mr. MITCHELL. That is what I understood was to be the basis of this hearing this morning; that the tabulation prepared by Mr. Turner as official tabulator was to be introduced.

They had not yet come to putting in the evidence, for the evidence that was to come before this committee and substantially the only evidence it had was the evidence of the men who made this tabulation; and now for the first time it is to be presented to the committee, and it has not yet been presented.

Mr. MITCHELL. That is what I understood was to be the basis of this hearing this morning; that the tabulation prepared by Mr. Turner as official tabulator was to be introduced.

Mr. PARSONS. I will introduce it.

So it had not been introduced yet.

Mr. MITCHELL. If we can arrive at that point, I think we will clarify the whole situation.

Now, in order to answer one question I will say this, that we are going to object to the recount as a whole for this reason, that the burden, as we understand it, is imposed upon the contestant to demonstrate to the satisfaction of the committee, or in the case of a contest, to the court, that there has been no reasonable opportunity for tampering with the ballots. We will object to the recount particularly so far as it affects the paper ballots for the same reason, that there has been no attempt to show that these ballots, after they were sent in by the officials charged with their counting, had not been tampered with, or there was no opportunity to tamper with them.

We would object specifically to 67 precincts, and I have made a list of those precincts here, in which it appears by the returns made on the work sheets of the supervisors here, both of them agreeing that these ballots were received in unsealed sacks, and therefore there is prima facie evidence, at least, that there was opportunity for tampering with those ballots. They involve some 16,000 ballots—over 16,000—in one case, and over 15,000 in the case of the other party.

We would offer further objections to the recount in that upon the attorneys' checking up on the tabulation, we find that there are 47 ballots unaccounted for; in other words, the tabulation shows an excess of 47 ballots over those the attorneys have been able to discover, 4 of which appear by the tabulation to be votes challenged against Mr. Steck and 43 challenged against Mr. Brookhart.

Further:

Senator CARAWAY. You know, this is the first time that I have attended any hearing of the testimony in this case. Was this objection to the recount made at the time the ballots were brought here or is this the first time you have lodged your objection to the recount?

How could it be made when the ballots were brought there? A lot of sacks were sent here by express from different points of shipment, I presume. To whom were they to object? Were they to go down and object to the station agent? Were they to go down and object to the custodian? This is what Mr. Mitchell said:

This is the first time that I, as representing Senator Brookhart, have offered this objection; and it is really the first opportunity, because this is when the recount is offered—when the tabulation is offered.

And that is when it had to be made.

But the objection has been entered in each case of the 67 precincts that I have a list of here on the work sheets, which work sheets were signed by the supervisors, one of whom represented either party.

Mr. President, to say that this man did not object, and object in time, is not tenable; but if he had never made an objection, if he had stood mute, and if the facts appeared as they appear here now, it would be the duty of the Senate, in determining who is entitled to a seat in this body, to decide the question according to the law and the fact, even though an attorney had utterly failed to make an objection.

Why, Mr. President, the case is like that of offering a deposition that has incompetent evidence in it. You do not have to object when the deposition is being taken; you object when the deposition is offered. The only thing you can not object to is the particular form of the question.

Mr. President, there is another important point in this case that I wanted to discuss; but I have gone a little over my time, and I hope the Senator from West Virginia will pardon me.

Mr. GOFF. Mr. President, in the discussion of this case for the majority of the committee, I wish to say at the very beginning of my remarks that neither the committee nor myself as its advocate was influenced in the least by any political suggestions or colorings.

Mr. BLEASE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Ernst	Keyes	Reed, Pa.
Bayard	Fernald	King	Robinson, Ark.
Bingham	Ferris	La Follette	Robinson, Ind.
Blease	Fess	Lenroot	Sackett
Borah	Fletcher	McKellar	Sheppard
Bratton	Frazier	McLean	Shipstead
Broussard	George	McMaster	Shortridge
Bruce	Gerry	McNary	Simmons
Butler	Gillett	Mayfield	Smith
Cameron	Glass	Metcalf	Smoot
Capper	Goff	Moses	Stanfield
Caraway	Gooding	Neely	Stephens
Copeland	Hale	Norbeck	Swanson
Couzens	Harrell	Norris	Trammell
Cummins	Harris	Nye	Tyson
Curtis	Harrison	Oddie	Walsh
Dale	Heflin	Overman	Warren
Deneen	Howell	Phipps	Watson
Dill	Johnson	Pine	Wheeler
Edge	Jones, Wash.	Ransdell	Williams
Edwards	Kendrick	Reed, Mo.	Willis

The PRESIDING OFFICER. Eighty-four Senators having answered to their names, there is a quorum present.

Mr. GOFF. Mr. President, as I was stating when the absence of a quorum was suggested, there was and is no view, political or prejudiced, which animated or controlled the actions of the Committee on Privileges and Elections. This entire question was determined according to the facts and the law, and I intend to show to Senators on both sides of this Chamber that not only were the laws of Iowa respected and followed in every regard, but that the laws of the Nation, as well as the Constitution of the United States, were observed in every step which the committee took.

When the Committee on Privileges and Elections assumed jurisdiction of this contest, referred to as the Steck-Brookhart contest, it had before it the pleadings of the contestant and the contestee. Those pleadings raised certain issues, which it became the duty of the committee to investigate and then decide. Those issues were based upon this very necessary and initial fact: That at least two months before the petition of Mr. Steck was filed with the Senate of the United States, in which he raised the issues involved in this contest, Senator Brookhart, as was his right, sought and obtained in the State of Iowa an injunction against opening the machines, in order that the State statute providing that the machines should be opened within 30 days after the election should not in any way interfere with this contest. It is a striking matter that before Mr. Steck filed his petition of contest with the Senate of the United States Senator Brookhart, in anticipation, went out into the State of Iowa and obtained an injunction against the opening of the machines. That kept the machine vote intact, and when the contest was duly filed the issues then raised showed that upon the very face of the official returns from the State of Iowa there was a plurality of 775 votes in favor of Senator Brookhart.

My distinguished friend from Missouri [Mr. REED] has spent some time arguing upon the presumptions that arise from a certificate of election. If I should voluntarily follow him to his legal conclusion, I would be compelled to admit that in few, if any, of the election contests which have appeared before the Senate or the House of Representatives would it be possible to overcome the almost irresistible presumption which attaches to a certificate of election.

I regret I can not take the time now at my disposal to go into all of the provisions of the code of Iowa adopted in 1924, which I have here before me, relating to elections. All of these provisions were passed for the purpose of safeguarding the ballots after they have been cast by those entitled to vote.

These ballots—and I challenge anyone to contradict what I shall now say—were sent to the proper custodians, the auditors of the different counties where the ballots were cast, and they were sent there according to the law of Iowa, when the polls closed, and they were in the custody of those county auditors continuously until they found their way, under the stipulation of the parties, into the jurisdiction of the committee here in the city of Washington.

It has been said that men can not stipulate their way into the Senate of the United States, and that men can not be stipulated out of the Senate of the United States. How axiomatic that statement is. The very making of it not only sounds an inherent truth, but furnishes its own responsive answer. There is no suggestion in the record that anybody

was to be stipulated out of the Senate in this contest, or that anybody could be stipulated into the Senate.

Your Committee on Privileges and Elections did the only thing it could do. It heard the parties to the contest, and they did the only thing they could do, to prove or disprove the issues which were raised by their respective pleadings.

It has been suggested in this debate that these great questions of sovereign government can never be subject to encroachment by the stipulations of the parties in interest.

Mr. President, this Government of ours is a government of law and not a government of men, but how can the laws be enforced if they are not enforced through men? Parties come before the Senate in contest, come officially representing the inherent rights of sovereign States; but, nevertheless, they come representing those rights, and solely because they advance and maintain their own personal interest in them. The parties in this contest came before the committee and undertook to meet the issues here involved, whether, under a fair and impartial count in the city of Washington, under the direction of your committee, the official managers and the official counters in the State of Iowa had made honest mistakes. Your committee approved and permitted certain stipulations and certain agreements entered into by the parties to this contest who each assumed and carried before the Senate of the United States such portion of the delegated sovereignty of the State of Iowa to which they were each entitled to make claim by virtue of facts that they were the representatives entitled to act.

Mr. NORRIS. Mr. President—

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from Nebraska?

Mr. GOFF. I yield for a question.

Mr. NORRIS. When the Senator refers to stipulation does he also include objections? Is there any question involved here about objections sometimes having been made too late?

Mr. GOFF. That might be involved. I want the Senator to ask me any question, but he knows how limited my time is, and I do not intend to become involved in any argument.

Mr. NORRIS. I shall not interrupt the Senator without his consent.

Mr. GOFF. I want to be interrupted, and I wish I had all day to talk about the case.

Mr. NORRIS. So do I. Then I will ask the Senator this question: The Senator mentioned two or three particular precincts where, it seemed to me, one rule was applied in one precinct and the reverse in another one.

Mr. GOFF. Does the Senator refer to the five precincts beginning with Winterset?

Mr. NORRIS. I want to ask the Senator about the first ward of Winterset, Madison County, where there was a shortage of votes, it seems, and the committee took the official count, which gave Mr. Steck 198 votes. They took the official count, as I understand it, because there were a large number of votes short. There were not as many ballots as there were people who voted at that precinct, so they gave Mr. Steck the official count, which gives him a gain of 198 votes.

I am not criticizing that gain, but in Guthrie County, Bear Grove Township precincts, there was a shortage of 20 ballots as compared with the number of people voting. If the committee had taken the official count there, it would have given Senator Brookhart an advantage of 20 votes, but there they did not take it, which gave Steck an advantage. In Estherville Township, where there was likewise a shortage of 34 ballots, the committee did not take the official count, which gave Steck an advantage again of the discrepancy. The same applied in Center Township, Wapello County, where there was a shortage of 22 ballots. The committee there refused to take the official count, and again gave Steck the advantage.

Why is it? There may be a good reason for it; but as I understand it the committee did this because, it is claimed and denied, I think, that Senator Brookhart's attorney did not object in those precincts.

Mr. GOFF. While as a matter of course I intended to discuss the precincts to which the Senator has referred and while it is true that he has anticipated my argument in the request which he now makes I shall divert and answer his inquiries at this time.

In the first ward of Winterset, in Madison County, where there was a difference—in fact, a shortage—of 198 votes, the counters gave, by special consent and agreement among themselves, the benefit of the official count to Senator Brookhart. Why did they do it? They did it because the ballots from that precinct came to the city of Washington unsealed.

Mr. NORRIS. But the advantage was for Steck. Steck gained 198 votes.

Mr. GOFF. I know Steck would have gained if we had gone on, but he did not gain by the recount. I am not going into that speculative field. As I understand it, if we had gone on we would have found a gain of over 60 votes for Steck.

Mr. WHEELER. As a matter of fact, taking the official count, there was a gain for Steck, and that is what we are complaining about. The official count gives a gain for Steck in that precinct.

Mr. NORRIS. Nobody is complaining of that particular precinct. I am not complaining about it, but why not apply the same rule in the other precincts?

Mr. GOFF. Let me say in answer to the suggestion of the Senator from Nebraska and the Senator from Montana that those votes came here in unsealed packages and they were unsealed.

Mr. WHEELER. Mr. President—

Mr. GOFF. I want to say that in reference to every other one of the precincts to which the Senator from Nebraska has referred and which no doubt the Senator from Montana has in mind, every one of the packages, the original containers bearing the votes, came to the city of Washington sealed, with no evidence whatsoever that they had been opened or that there was the opportunity existing at any time or place that the contents of those containers could have been changed, and they were obviously the best evidence.

Mr. NORRIS. Let us get the facts.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. GOFF. I yield to the Senator from Nebraska.

Mr. NORRIS. I want to ask the Senator another question. In one of those seven precincts where the ballots were short is it not true that Senator Brookhart lost 20 votes, the exact number of ballots that they were short, and can the Senator account for that by an accident? Would it be sufficient explanation to say that the ballots in this particular precinct came sealed when that shortage occurred?

Mr. GOFF. I can account for that difference in many ways. There was unquestionably a difference between the official count in many of those precincts and the number of ballots in the ballot box, and I intend in the course of my discussion to refer to that fact. There were in none of these precincts any evidences that the original containers had been opened, except in the first ward of Winterset, Madison County, which is shown by two exhibits to which the Senator has referred on pages 248 and 249.

Mr. STEPHENS. Mr. President, will the Senator yield at this point?

Mr. GOFF. I yield for a question.

Mr. STEPHENS. I only want to ask a question. Does not the Senator know, with reference to the Estherville precinct in Emmet County, that it was noted on the work sheet that the ballots came here in a sealed box just as the Senator stated many others came, and that later there were 34 other ballots sent here as coming from the same precinct, thus showing that the fact that it was reported to have been sealed is not conclusive at all that the ballots had been preserved in the manner required by law? I call attention to pages 248 and 249 of the hearings.

Mr. GOFF. There is no dispute about that fact. The ballots came down here as shown in Exhibit A on page 248, to which the Senator from Mississippi has called my attention—Emmet County, Estherville Township. They came in a sealed sack. Then later on, as the work sheets show, the chief supervisor found "no votes, 65." He found 5 Brookhart ballots protested by Mr. Pendy, and he found 20 less ballots than the number of names on the poll book. That is not an unusual circumstance to meet with in this contest. Poll book after poll book came to the committee with just such discrepancies upon their face.

Mr. STEPHENS. I am not talking about discrepancies.

Mr. GOFF. I know what the Senator is talking about. I am answering the Senator's question in my own way.

Mr. STEPHENS. I understand, but I am discussing the fact that 34 ballots came separately and were not in the bag that came here sealed originally.

Mr. GOFF. The record shows that 34 ballots did come here later. They came in an unsealed package and they were not considered by the counters and were not considered by the supervisors.

Mr. STEPHENS. Does not the law of the State of Iowa require that all ballots shall be kept together? The point I am making is the fact that 34 came separately and apart from the main sack, showing that they were not preserved as required by law.

Mr. GOFF. I understand the Senator's question thoroughly; in fact, I understood before he asked it, and I knew the motive

that prompted it. I have discussed these questions with the distinguished Senator from Mississippi, and I know his psychology and his mental operations upon this very issue. But I want to say, and for the purposes of this case it is all sufficient, that the representatives of these parties when they counted these identical ballots agreed to count them according to the original stipulations and understandings and agreements, and they were satisfied that the ballots came from an untampered custody.

Mr. WHEELER. Mr. President, will the Senator yield?

Mr. GOFF. For a question only.

Mr. WHEELER. What was the committee sent out to do? Was not the committee to get the facts regardless of any stipulations?

Mr. GOFF. Exactly; and the committee obtained the facts.

Mr. WHEELER. I submit that the committee did not get the facts, and I do not believe the committee knows the facts.

Mr. GOFF. That is where the Senator from Montana and I disagree and where we will never agree.

Mr. WHEELER. That is a certainty, that the Senator and I would never agree, because he does not know the facts, and neither did we agree upon Harry Daugherty, so let us not get into any argument about that.

Mr. GOFF. No; the Senator has to inject matters into this case that show he is lacking in that fine judicial quality which a Senator should possess.

Mr. WHEELER. If I lack judicial qualities, then I am sure the Senator is lacking them in this case.

Mr. GOFF. I refuse to yield any further for argument. I shall yield to the Senator for any question, but I shall not have my time consumed by yielding to matters of political immateriality.

Now, Mr. President, let us merely for one moment in regard to—

Mr. NORRIS. Mr. President, may I ask the Senator a question?

Mr. GOFF. The Senator may do so if it is a short question, but, understand, I am not going to let the Senator from Nebraska consume my time.

Mr. NORRIS. No; I will not ask the Senator any question without his consent. I wanted to ask the Senator if he will not explain, as I asked him before, why in the four precincts which I named the committee always applied the rule that gave Steck the gain and Brookhart the loss?

Mr. GOFF. Yes; I am going to do so now; and will the Senator remain quiet just a moment while I do so?

Mr. NORRIS. Yes; I shall be glad to do so if the Senator will answer the question.

Mr. GOFF. Very well.

Mr. President, I shall take up one of the poll books to which so much reference has been made. This [exhibiting] is a poll book from the county of Adair, in Prussia Township. This poll book shows that 214 voters were listed. That is the indorsement made by the clerk whose duty it was to record the name of every voter when he entered the voting booth and gave his name to those in charge of the election. Two hundred and fourteen names were written upon this book. Then we turn to the official returns on page 42 and we find 191 votes cast for the office of United States Senator; 103 for Brookhart and 88 for Steck. When we examine these poll lists, take the names written and recorded by the election clerks, and then turn to the official returns we find discrepancies, and, as I have noted it, in this particular poll book a discrepancy of 23 votes. This indicates that when we compare the poll list with the votes in the ballot box, compare the ballots with the very official paper, the law of Iowa requires these election judges to keep we have a discrepancy of 23 votes upon the face of the returns before the poll books and ballots can reach those who are charged with their custody. It is asked, Why is it when the ballots came to the city of Washington and were counted a difference was found between the poll lists and the number of official ballots as established by the recount? I can take other poll books that are lying here—and time only prevents—and show that the same situation exists reflecting merely the mistake of those who honestly conducted the election.

Mr. NORRIS. Mr. President, may I ask the Senator something about this poll book to which he has referred?

Mr. GOFF. Yes.

Mr. NORRIS. Does not the Senator realize that he has compared before the Senate the number of votes cast for Senator and the number of voters voting, and that that is not a determination of the number of ballots that were cast; that there were, perhaps, a good many voters there who did not vote for Senator at all?

Mr. GOFF. And there were a good many who did not vote for President, according to that book.

Mr. NORRIS. Exactly; and that is true of every precinct, probably. The Senator can not deduce anything from that.

Mr. GOFF. And there were 207 officially recorded as voting for President, while there are 214 names on the poll list.

Mr. NORRIS. The 214 men voted, but all of them did not vote for Senator, and probably all did not vote for some other candidates; so the Senator's poll book does not prove anything.

Mr. GOFF. That is what I expected, Mr. President. I expected the Senator from Nebraska to say that he could not be convinced against his will, and I am not surprised that he should take and does take that position. However, I am going to reply to the suggestions of the Senator from Nebraska with reference to the five precincts in the different exhibits which appear from pages 247 to 251.

In Bear Grove township, in Guthrie County, it was found by the chief supervisor that 236 ballots were the number cast, according to the recount; 23 of them were no votes, and from this precinct the ballots came to Washington sealed as required. It was agreed by the counters; it was agreed by the attorneys; it was agreed by the parties to this contest, who, as I said a moment ago, came here clothed, if you prefer so to term it, with the sovereignty of their State—it was agreed by all the parties that the ballots were the best evidence as to the number of votes cast, and it was so ruled.

Mr. WHEELER. Mr. President, will the Senator yield to me?

Mr. GOFF. Certainly.

Mr. WHEELER. The law of Iowa requires, does it not, that proof should be offered as to the preservation of the ballots?

Mr. GOFF. Certainly.

Mr. WHEELER. And there was not any preliminary proof offered at all as to how these ballots were kept prior to the time that they came into the auditor's hands, was there?

Mr. GOFF. Oh, yes; there was.

Mr. WHEELER. What proof was introduced in evidence to show that these ballots were properly preserved from the time they left the counties?

Mr. GOFF. There was proof, and I will discuss that. It was the proof that came with the ballots, came with the certificates, came with the ballots from their proper custodians.

Mr. WHEELER. Mr. President, will the Senator yield for just one more question, and that is this: Would not it have been possible for the committee to call witnesses when objection was made to these ballots here in Washington?

Mr. GOFF. The Senator from Oklahoma was asking me if the officials were not presumed to do their duty, and I did not catch the question of the Senator from Montana. I wish him to finish his question, please, so that I may go on.

Mr. WHEELER. They are presumed to do their duty; but the law requires, does it not, that evidence should be introduced preliminary to the ballots being used as the best evidence?

Mr. GOFF. I know the Senator's question. Will he let me answer it?

Mr. WHEELER. Yes.

Mr. GOFF. Mr. President, we come to Emmet County, Estherville township, in the city of Estherville. This is Exhibit A on page 248. In that precinct the ballots came properly sealed, but it was ruled that the ballots were the best evidence as to the number of votes contained in the ballot box and for whom cast.

Mr. WHEELER. That does not answer my question, however.

Mr. GOFF. Well, I will answer the Senator's question. I am not going to answer it all at once, but I am going to answer the question in my own time and in my own way.

Mr. LENROOT rose.

Mr. GOFF. Does the Senator from Wisconsin desire to ask me a question?

Mr. LENROOT. I wanted some information. The Senator from West Virginia referred to Bear Grove township. I understood the Senator to say the counters and attorneys had agreed upon the vote there, but the work sheet seems to show the result was submitted to the committee, and Mr. Mitchell objected to the recount. Was there any waiver or stipulation as to that township?

Mr. GOFF. I say that everything that appeared on the work sheet was agreed to by the counters and agreed to by the attorney and then later submitted to the committee.

Mr. LENROOT. For decision?

Mr. GOFF. For decision.

Mr. NORRIS. The decision in that case was to count the ballots, and Brookhart lost by that. The decision in the other case, in Winterset, was to take the official count, and Brookhart lost there. The peculiarity of that is manifest.

Mr. GOFF. Mr. President, with all due respect to my esteemed friend from Nebraska, I shall refuse to yield further for any question connected with the precincts until I finish my argument.

Mr. NORRIS. Very well.

Mr. GOFF. I know what the Senator is trying to bring out before the Senate. He is trying to bring out a situation that is not justified by the facts; that is not justified by the law. Senators say that parties to the contest could not stipulate or waive anything. They say, when the parties to this contest came down before the committee of the Senate of the United States and agreed to go to Iowa and do certain things and agreed to expedite the decision of the issues here involved, that these men who, if they had ceased to act, this contest would have ceased, had no right to come in and agree as to what the record showed, because it was an encroachment upon some sovereign right. You may call it, Mr. President, a waiver in law or you may call it an estoppel in equity. You may say, as Senators have said who are arguing for the minority report, that the parties to the contest under such conditions could not waive rights which would put a man in or out of the Senate or that they could not make stipulations that accomplished the same thing. I do not care what it may be called, but I say, Mr. President, when the parties to this contest came before the Committee on Privileges and Elections and agreed to do the things which they did agree to do, when they went out and took the official count of the machines and then, as it is well known and understood by every Senator who has considered this matter, for the purpose of their personal and financial convenience, waived or took back the provisions of the stipulation requiring that the representatives or supervisors of each of the parties should go to each of the counties, inspect the ballots, and talk to the auditors and satisfy themselves that the ballots were in the same condition in which they were when they were sent to them when the polls closed on the 4th of November, 1924—when they did that, and then came down here and appointed their supervisors, agreed that Mr. Turner, a man dissociated from the Senate, who spends his official life in the Census Bureau, should be the chief tabulator, and each appointed his respective supervisors, Mr. Pendy being appointed to represent Mr. Steck and Mr. Louis Cook to represent Mr. Brookhart, and they stood here day by day and saw the ballots opened; had their official tabulating sheet, which they called a work sheet, and indorsed thereon everything that occurred to them, their objections, their protests, I challenge, Mr. President, anyone to say or to point to a statement or a suggestion that any of the representatives of the contesting parties saw fit to indorse on the work sheet a statement or even a suggestion that the ballots had been tampered with.

I know that Senators on the minority side do not like the word waiver. They object to estoppel. But, Mr. President, ever since Moses thundered the moral precepts from Mount Sinai it has been the rule of good morals, it has been the rule of statesmanship, it is tied up and wrapped up in the Constitution of the United States, that when a man keeps quiet when it is his duty to speak he shall not be allowed to speak when he ought to keep quiet.

Why did not these men come and say to your committee: "There is something unusual; there is something wrong"? Why did they not come and suggest from day to day on this work sheet that there were matters which challenged the attention of those who were wedded to the principles of political truth and the precepts of moral right?

As the distinguished senior Senator from Montana [Mr. WALSH] so well said the other day—it was not when he was making his very lucid argument; it was when he was criticizing a suggestion made—"Is it the purpose of the Senate to permit contestants to sit by and gamble with the recount?" Is it, Mr. President, the purpose of the Senate, which we like to call the most deliberative judicial body in all the world—and I believe it is, because it has back of it all the Anglo-Saxon civilization and the Anglo-Saxon law that has made the United States of America the greatest Nation on this earth, and which will continue it in such a position just so long and no longer than we are honest with ourselves.

Mr. President, it does not become those who attack the action of my committee, this majority report, and say that it is contrary to what they consider the law to be.

What is the law? The law of Iowa is that when the polls close these ballots shall be placed into containers; that these ballots shall be sealed; that before the ballots are put in the containers they shall be folded twice; they shall be strung on a wire; the wire shall be tied in a knot at the end; that knot shall be sealed. And that the ballots so strung on a wire and

so sealed shall be put in such a container. Then the law provides that this container shall be drawn together tightly, that the knot shall be tied, and that a seal shall be placed upon such knot. Then certain indorsements, according to the law, are required to be indorsed upon the back of this container. Then the ballots so preserved are sent to the official custodian. He is required to keep them inviolate for a period of six months, unless duly and legally directed to surrender them.

It has been suggested that no one went to the State of Iowa to see that these containers were properly sealed before they were given to the postmasters of the several townships and registered and sent to the city of Washington. I say, Mr. President, that the Senate of the United States, through its committee, is not concerned with that question, in the light of what these parties did; and when these ballots came here and these containers were opened, they were opened in the presence of the representatives of the contestant and the contestee, and no one raised a protest or suggested irregularity.

Does anyone imagine that when one of these containers was opened, if there was anything upon the inside to indicate that the ballots had been tampered with, it would not have appeared upon the work sheets signed by the representatives of these parties? As a matter of course it would have appeared there, unless we are to indulge the unreasonable and inhuman presumption that men of honor and men of integrity refuse, when the crucial test comes, to serve their principals and to be faithful to their trust. There is not a suggestion on any of the work sheets that such a condition arose, and not even a suspicion occurred to the minds of any of the representatives of these parties.

It is true that later when the parties came to Washington, about the 4th of December, 1925, the ballots had been counted. They appeared before the Committee on Privileges and Elections and made certain requests and raised certain objections. They had a right to advance these objections. They had a right to make any argument that they saw fit to make. But when they undertook, Mr. President, to attack the custody of these ballots, I say as a matter of law, based upon the inherent fairness and morality of the common sense of the situation, that they have no justification for saying that the ballots did not come from the proper custody.

The ballots were duly and legally transmitted here, and they were inspected by the parties, and not one of them raised a suggestion of doubt. The ballots were then counted, and the attorneys came before the subcommittee and stated they were not ready to proceed. The reason they gave was that there were eight-odd thousand ballots challenged, eight-odd thousand ballots protested and questioned, which could be divided into classes not only to clarify the situation but to aid the parties and to assist the committee in reaching a correct decision in the matter.

Mr. President, I have tried to prepare a sheet which illustrates these 16 classes which I think are determinative of this contest, and I shall ask Mr. Turner to put it on the board where everyone can see it. When it reaches the board and is in a position for inspection I shall call to the attention of the Senate certain of the facts that are there disclosed.

This sheet shows how the committee passed on the ballots which were considered valid votes for one party or the other, and is as follows:

	Brookhart	Steck
Unchallenged.....	443,817	447,944
Agreed by attorneys.....	14	1,163
Class 2.....	42	13
Class 4.....	276	62
Class 5.....	2,490	
Class 6.....	1,755	149
Class 7.....	37	27
Class 8.....	21	1
Class 9.....	90	
Class 10.....	4	
Class 11.....	22	222
Class 12.....	37	57
Class 13.....	16	362
Class 14.....	24	14
Class 15.....	97	155
Class 16.....	7	
Total.....	448,749	450,169
Steck plurality.....		1,420

Mr. President, that there may be no ground for a difference of opinion, that we may start with the unchallenged votes, I turn to page 31 of the contestant's brief and argument, the incumbent's brief and the personal summary by Senator Brookhart, and call attention to the fact that he there states that the tabulated votes were 443,817 for himself and 447,944 for

Mr. Steck. Those are the figures to which he agrees as being the figures of the tabulator. Now, I invite attention to page 230 of the first division of the hearings. I there show on this chart that class 1 of the 16 classes is omitted. Class 1, as it appears on page 230, is:

No votes; conceded by both parties.

Mr. Steck was charged with 35 and Mr. Brookhart was there charged with 115. Those votes were conceded by all parties to be no votes, and it was agreed by the attorneys—it was agreed by Senator Brookhart when he appeared before the full committee and presented his contention—that there was an agreement of "no votes" in class 1. We will, therefore, waste no time in discussing that phase of the question.

I proceed to subdivision 2 in this classification of 16 divisions; and I shall not, Mr. President—because the Senate has heard so much about this very matter in the last few days—go into it at any length. All that I desire to say, however, is that in this classification, known as class 2, and which consisted of 69 ballots, 14 of these were claimed for Mr. Steck and 55 for Senator Brookhart.

They had been claimed by the opposing attorneys as no votes for either candidate. The committee went through these ballots and ruled 13 of them to be good for Mr. Steck. These ballots were held to show an intention to vote for Mr. Steck on the part of the voters, and one of these ballots—and I mentioned a moment ago that there were 14—was held to be a defective ballot and therefore no vote. In this last ballot Senator Brookhart's name had been stricken out, and the cross before the name of Mr. Steck had an oblique line leading to it, but there was no cross in the square, and it was not considered by your committee a sufficient indication of an intention to vote for Mr. Steck.

The committee then ruled, as will be seen on the board, that 42 of the votes claimed by Senator Brookhart were good votes for Senator Brookhart, and the committee concluded that they showed an intention on the part of the voters to vote for Brookhart, and as to the remaining ballots the intention to vote for anyone for Senator was not sufficiently clear to enable the committee to determine for whom they were intended.

These ballots were in three classes. The first embraced 11 ballots, as is shown by stipulations 53 and 59. Those were the agreements the attorneys entered into when they promised the committee, in the early part of December, 1925, that if they were given a short time they would tabulate and arrange these votes.

Now I go to class 3, shown on the sheet under the heading "Agreed by attorneys." Class 3 consisted, as will be seen by reference to page 230, of votes conceded to the parties under whose names they appeared. Mr. Steck was conceded 1,163 votes and Mr. Brookhart was conceded 14 votes.

Class 4. This class embraces all those ballots wherein the name of either Steck or Brookhart was written in the Progressive column for Senator, with various and different initials. A cross was also in some of these ballots, placed in the square before the name so written in. In this class there were 62 votes claimed by Steck and 276 such votes claimed by Brookhart. The committee held that the intention of the voter was sufficiently clear and the ballots were ruled for the respective parties as indicated.

The argument was made that the committee adopted one rule in the case of Senator Brookhart and another rule in the case of Mr. Steck. Let me merely, for the purposes of comparison, go to subdivision 5. There are included under Senator Brookhart's column 2,490 votes. Those 2,490 votes came from a classified tabulation of 3,834 ballots which were claimed by Senator Brookhart and objected to for several reasons. Two thousand four hundred and ninety of them were conceded by Mr. Steck's attorneys to be good votes, and they were so treated by the committee.

Mr. President, a contest was filed by the Republican State Central Committee of the State of Iowa against the seating of Senator Brookhart. That contest, which appears in volume 1 of the hearings, stated, in substance, that Senator Brookhart was not a Republican; that he was not a member of the Republican Party; that he obtained his primary nomination under false pretenses; that he had gotten his name on the ticket under false pretenses; that prior to the 3d day of October, 1924, he had refused to indicate whom he would support for President of the United States. Then the petition goes on to state that from and after the 3d day of October, 1924, when it was too late to take his name from the ticket, he announced that he would support the candidacies of Senator La Follette and Senator Wheeler.

The Republican State central committee then proceeded to show that on the 3d day of October, 1924, in what was known

as his Emmetsburg speech, Senator Brookhart made certain statements. Mr. President, I am not criticizing Senator Brookhart personally. It was a matter within his own conscience to stand with his party or to go against it. It was a matter for him to decide. I have thought of the principle so frequently raised in American politics, that when a candidate offers his name to his people and gives them his promise that he stands for certain things, he has made the highest moral promise and assumed the most binding obligation that man can ever make, because he does not make it to an individual—he makes it to thousands of his people.

I remember, Mr. President, that many years ago it fell to my lot to reside for a number of years in the State of Wisconsin. I remember talking with Senator La Follette, father of the Senator LA FOLLETTE now a Member of this Senate, and discussing with him then the question to which I have just adverted. I could show among my books and papers a speech made by the late Senator La Follette in which he said that when a man made a promise to the people of a sovereign State it was the highest form of promise he could make. Senator Brookhart made such a promise, and he did not keep it. Why mince words? He broke it, and the Republican State central committee came here and protested his election.

The Senator from Georgia [Mr. GEORGE] has said the contest was dismissed, which is true. Nevertheless, it has this important bearing upon this question, that on the 5th day of October, 1924, the Republican State central committee of the State of Iowa announced publicly that it had no candidate for the office of United States Senator. It published that in every newspaper. It sent it broadcast to the people of that great Commonwealth. It blazoned it on the housetops, and it electrified it into the minds of the people. It was known, known to everybody, and known everywhere. May I make another statement in that connection? It was made known because in his Emmetsburg speech Senator Brookhart saw fit to leave the Republican Party.

Mr. REED of Missouri. Mr. President—

The PRESIDING OFFICER (Mr. GILLET in the chair). Does the Senator from West Virginia yield to the Senator from Missouri?

Mr. GOFF. I yield.

Mr. REED of Missouri. I do not want to interrupt the Senator, but merely to ask him if he recalls, when I was referring to these matters in connection with the Iowa contest, he stated to me that that was wholly out of the case, and, in substance, that I should not refer to it?

Mr. GOFF. Do I understand the Senator to say that I said that?

Mr. REED of Missouri. I so understood the Senator.

Mr. GOFF. May I suggest to the Senator that I did not interrupt him once while he was speaking, but that it was the Senator from Georgia?

Mr. REED of Missouri. I apologize to the Senator. I am in error, then.

Mr. GOFF. I wish to say, in reply to the Senator, that I am referring to this not to bring in politics but in order to show the psychology of the voter. That is the only purpose for which I make reference to it.

In this very connection—and what I intend to read will but confirm to the Senator from Missouri what I have said—I refer to page 111 in the first volume of the hearings. I wish to show what Mr. Mitchell, the attorney for Senator Brookhart, said in cross-examining the chairman of the Republican State central committee in regard to this matter. I read:

Mr. MITCHELL. When the committee passed this resolution that there was no Republican candidate, was that given to the newspapers?

Mr. BALDRIDGE. Yes.

Mr. MITCHELL. Would state that that had considerable publicity?

Mr. BALDRIDGE. I would judge so.

Mr. MITCHELL. As a matter of fact, practically every voter in the State of Iowa knew of that action which was taken by the State central committee, did he not?

Mr. BALDRIDGE. The voters had an opportunity to read the newspapers.

Mr. MITCHELL. And most of them do in Iowa.

Mr. BALDRIDGE. We have the smallest illiteracy of any State in the Union.

Mr. President, when the attorneys and the supervisors came to protest and contest these eight thousand and odd votes which I have itemized on the board a protest was entered in subdivision 5 as to 2,490 ballots against Senator Brookhart, upon the ground that Senator Brookhart was not a member of the Republican Party. And in that very connection a counter challenge as to 1,163 votes was entered by the representatives of Senator Brookhart against Mr. Steck. To show merely that

the same rule and the same procedure was followed, in class 5 Mr. Brookhart was given the 2,490 votes out of the 8,000 protested by your committee. It was then conceded by Senator Brookhart's representatives that the 1,163 votes which had been contested and protested by the representatives of Senator Brookhart were good votes.

Mr. President, if I may divert for a moment—

The VICE PRESIDENT. The Chair will state that under the unanimous-consent agreement the Senator's time will expire in 15 minutes.

Mr. NORRIS. Does not the time expire at 3 o'clock?

Mr. GOFF. The time expires at 3 o'clock, but I have 15 minutes under the unanimous-consent agreement.

The VICE PRESIDENT. The agreement is that beginning at 3 o'clock no Senator shall be permitted to speak more than once or longer than 15 minutes. The Chair rules that that would apply to the Senator occupying the floor at the time of the beginning of the unanimous-consent agreement. The Senator may proceed for 15 minutes longer.

Mr. GOFF. That was my understanding, and I thank you, Mr. President, for confirming my view.

The committee had, as I said, 3,834 votes in that class which were protested votes, and when 2,490 of them were conceded to be good votes and the attorneys came before the committee and so conceded them there was no further contest or protest in reference to the 2,490 votes, although, subtracting 2,490 from the 3,834 ballots claimed for Senator Brookhart, we came to the ballots known as the 1,344 ballots, which I shall now discuss.

Mr. President, there was no violation by your committee of the laws of Iowa in reaching that conclusion. The law to which reference has been made is section 811 of the Code of 1924. I say that if we had been in the courts of Iowa there would have been a serious question as to whether the Code of 1924 applied. I say so because that code never went into existence until the 28th day of October, 1924, less than 10 days before the people of Iowa went to the polls. That code provided that anyone could vote the straight Republican ticket by marking a cross in the circle at the top of the Republican column. It provided that one could omit doing that and put a cross in the square opposite each name on the Republican ticket.

Mr. PHIPPS. Mr. President, will the Senator yield for a question?

Mr. GOFF. Certainly.

Mr. PHIPPS. Does the Senator know whether or not the official ballots had been printed before the 28th day of October?

Mr. GOFF. I know they had been printed.

Mr. PHIPPS. Does the Senator know whether or not—on some of those ballots, at least—instructions appeared to the voter describing the manner in which he might mark a cross to indicate his preference in voting?

Mr. GOFF. I do, and I have one such ballot which I will ask Mr. Turner to place on the blackboard.

Mr. REED of Missouri. Mr. President, does the Senator mean the ballots delivered to the voters bore a legend of instructions telling them how to vote, or was that on the sample ballot?

Mr. GOFF. The legal ballot bore such instructions. I hold in my hand an exact duplicate of the ballot which I have asked Mr. Turner to place on the blackboard. It is the official ballot for absent or disabled voters. I will say to the Senator from Missouri that the ballot from which I shall now read is the official ballot. This ballot was cast. This ballot is entitled "Official ballot for absent or disabled voters, general election, Polk County, Iowa, November 4, 1924." At the bottom of the ballot which was sent out to the absent and disabled voters of the State of Iowa there appeared upon the bottom of the ballot now on the blackboard the following:

To vote a straight party ticket, mark a cross in the circle only. If not voting a straight party ticket, mark a cross in the square over the name for which you wish to vote, and also mark your party ticket.

Mr. President, such ballots were accompanied by the affidavit of the absent or disabled voter, and I understand from talking with the supervisors and the tabulator and the officials charged with the counting of these ballots that there were 10,000 such ballots cast in the State of Iowa on the 4th day of November, 1924.

Mr. REED of Missouri. Is that in the record? Is the last statement made by the Senator in the record?

Mr. GOFF. No, that statement is nowhere in the record, in those words and figures, but it is based upon a computation of the number of absent and disabled voters in counties of similar size in the State of Iowa.

Mr. ASHURST. Mr. President, is the Senator, who is an able lawyer serving us, giving testimony entirely aliunde the record? Do I understand it is not in the record?

Mr. GOFF. You should understand it is within the knowledge of the officials.

Mr. ASHURST. That is not my question. Is there in the record what the Senator has related?

Mr. GOFF. If the Senator's conclusion was correct that my speech were in the record, then it would have been a mere superfluity to make it.

Mr. ASHURST. The conclusion I place on the Senator's statement is that it is wholly hearsay according to the way he stated it. It is not in the record, according to the Senator's statement.

Mr. GOFF. There are figures in the record from which it can be and in fact was computed, but the conclusions I have drawn are not stated in the record.

Mr. ASHURST. I wanted to be clear. Either it is in the record or it is not.

Mr. GOFF. The Senator is entitled to indulge any conclusion he may see fit.

To proceed further, what was the intention of the voter? The voter had before him the fact, scattered broadcast throughout the State of Iowa, that Senator Brookhart was not a Republican and that he had been repudiated by the State central committee. That fact has been proved by Senator Brookhart's attorney on page 111 of the record. Instructions were sent out to the voters similar to the instructions I have read. This fact will appear by referring to the official book, which reads:

This envelope contains a book of election laws. [NOTE.—This book must be returned to the county auditor.]

Here is a book of instructions having in it the laws as they existed in Iowa in the year 1922. There was no opportunity for these later code provisions upon which the minority so strenuously relies to be placed before the voters.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. GOFF. I only have five minutes and I can not yield. There was not only sent out to the voters this book of instructions, but they knew that they could vote, even under the code of 1924, in the way in which these 1,344 votes were cast. That provision—subdivision 3—of the code is not mandatory. It says the voter may mark his ballot in any one of three ways—and it does not take from the voter of the State of Iowa the right to vote in any way he sees fit so long as he expresses his intention. It is our duty to find the intention of the voter. It is our duty to construe every election law to find the intention of the voter. The rule is well stated in 20 Corpus Juris at page 155:

The intent of the voter is the prime consideration in determining the validity of the ballot, but this intent must be determined by an inspection of the ballot itself read in the light of the surrounding circumstances.

Mr. President, let me repeat that last statement. When we arrive at the intent of a voter we must reach that intent, judicially speaking, in the light of the surrounding circumstances. What was the light shining upon these 1,344 votes? Will anyone say that the people of Iowa did not know that the Republican State central committee had repudiated Senator Brookhart? Will anyone be so bold as to argue that when Mr. Mitchell brought out the fact that his constituency was the most literate and well read of any constituency in the Nation, and that such information had gone to everybody in the State of Iowa, that the people did not understand that they had no candidate for the great office of United States Senator on the Republican ticket? What did they do? They went into the polling booth and received a ballot. They went to the Republican ticket and they put a cross at the head of the Republican column. They came down the ticket and when they reached the name of Senator Brookhart they passed it by, and thereby destroyed by a special exemption their general intent as it appeared at the top of the ticket.

Can anyone say, that if we take both ballots and read them in the light of the surrounding circumstances, read them as the Republican State central committee and Mr. Mitchell would have us read them, that the people of the State of Iowa did not know that they had no candidate for the United States Senate? They were Republicans and they wanted to vote the straight Republican ticket. When they went down that column in these instances all over the State they clearly indicated and expressed an irrebuttable intention that they would not include Senator Brookhart in their general Republican vote.

Mr. REED of Missouri. Mr. President, will not the Senator admit that there were thousands of Democrats in that cam-

paign who wanted to vote for Mr. Brookhart, and the record clearly discloses that situation?

Mr. GOFF. I do not doubt that possibly this is true.

Mr. REED of Missouri. Were there not counted for Mr. Steck over a thousand votes where the cross was not in front of Mr. Steck's name, just as it was not in front of Mr. Brookhart's name when the committee threw out the 1,344 votes?

Mr. GOFF. No, I do not understand that there was any such situation. What I do understand is that the Senator contended—and I hope now if in answering the Senator I run over my time that the Senator will allow me to take it out of his 15 minutes.

Mr. REED of Missouri. No, I will not do that; but I will be generous enough to let him have time to answer the question.

Mr. GOFF. I would like to take it out of the Senator's 15 minutes, and I will not take very long.

Class 6. In this class 149 votes are claimed for Steck and 1,758 for Brookhart. These ballots, except three of them claimed by Brookhart, showed a vote for the respective candidates in the Republican and Democratic columns; and these ballots also had in some instances a cross before the blank line for Senator in the Progressive column. All of these ballots were held to show the intention of the voter except in the case of the three ballots claimed by Brookhart. There was one cross in the square before Brookhart's name in the Republican column. These three ballots had only a cross in the blank space opposite the Progressive column for Senator. These ballots were, as stated, given to the respective parties. These three ballots, in addition to the cross in the Republican circle, had crosses in the squares for the different offices shown in the Republican column except that for Senator. In the case of these three ballots it was held the intention was clearly shown not to vote for Brookhart and they were, for this reason, ruled no votes.

Class 7. In this class 65 ballots are included, 27 being claimed for Steck and 38 for Brookhart. While these ballots all had crosses in two party circles, though not both the Republican and Democratic columns, these ballots were held, with the exception of 2 ballots claimed by Brookhart, to show clearly the intention of the voter to vote for the candidate for whom claimed. In the case of the one ballot wherein there were crosses in both Republican and Progressive circles, and further crosses in the squares in the Progressive column for President, there were also crosses in the squares opposite the blank lines for United States Senator in the Progressive column. There were also crosses in the squares in the Republican column other than candidates for President and Senator. It was clearly intended not to vote for Brookhart, and so ruled no votes by the committee.

Class 8. Here the name of either Steck or Brookhart was written in the Progressive column, making all names appear twice on the ballot for Senator, and the cross placed before the name so written. These were ruled as good votes.

Class 9. These ballots were those where the name of Brookhart was written in the Progressive column, but no initials. The Progressive column, in which these names were written, sometimes had crosses in the square before the name and sometimes did not. These ballots were ruled by the committee as good, and were held to show intention sufficiently to vote for Brookhart.

Class 10. Out of 4 sample ballots, 4 were ruled by the committee to be votes for Brookhart.

Class 11. These ballots covered those on which arrows had been drawn, pointing to the candidate before whose name the cross had been made. These ballots were held good. The objections raised to these ballots were that they were mutilated in the sense that the arrow identified them as the vote of a certain individual. The committee overruled this contention and counted the ballots for the respective candidates, 222 for Steck and 22 for Brookhart.

Class 12. These ballots had lines directly before the name of the candidate by whose name a cross had been placed in the square, or other marks drawing attention to the cross so made. These ballots were held by the committee not to be identified ballots, and therefore good, 58 for Steck and 36 for Brookhart.

Class 13. These ballots were those where the name of one party was stricken out and a cross was placed in the square before the name of the other candidate. They were objected to on the ground of obliteration. They were held good votes for the party before whose name the cross had been placed. The committee held that they showed a clear intention on the part of the voter so to vote. There were 362 of such votes for Steck and 16 for Brookhart.

Class 14. These were ballots where crosses had been made in the squares opposite one candidate, and erased or obliterated and marked again in the square opposite the name of the op-

posing candidate. These ballots were ruled good. There were 14 of these for Steck and 24 for Brookhart.

Class 15. These were the ballots which contained miscellaneous markings. The committee held them good, and there were 97 for Brookhart and 155 for Steck.

Class 16. These were 10 unclassified votes, all of which were claimed by Brookhart. With the exception of 3 ballots the committee gave them to Brookhart. These 3 ballots had the name of Brookhart stricken through and no cross in any senatorial square, and were therefore ruled as no votes. This was clearly the intention of the voters.

The VICE PRESIDENT. The time of the Senator from West Virginia has expired.

Mr. REED of Missouri. Mr. President, I can take the floor only once, and when I take it I will give the Senator a chance. I do not want to take the floor now.

Mr. SHORTRIDGE. Mr. President, Senators will place me under additional obligation if they will permit me to proceed and state within a few moments, as I necessarily must, certain rules of law and certain principles by which I am guided, and by which—and I say this with the utmost respect—I think other Senators should be guided in reaching a conclusion in respect of this matter. Necessarily I can not elaborate; I must content myself with what may be regarded as rather a dogmatic statement of certain rules, of certain principles.

I first invite the thought of the Senate to the certificate of election coming from the State of Iowa. That certificate of election was presented here. It was found to be in due form and sufficient in substance, and being so found, the Senator certified to as being the duly chosen Senator from the State of Iowa appeared in this Chamber, took the oath, and entered upon the discharge of his duties as a qualified duly chosen Senator from a sovereign State. I ask that that certificate may appear in the brief remarks which I shall make, Mr. President.

The VICE PRESIDENT. Without objection, it is so ordered.

The certificate is as follows:

STATE OF IOWA,  
EXECUTIVE DEPARTMENT.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that on the 4th day of November, 1924, Hon. Smith W. Brookhart was duly chosen by the qualified electors of the State of Iowa a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the 4th day of March, 1925.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State of Iowa.

Done at Des Moines this 5th day of December, 1924.

[SEAL.]

N. E. KENDALL,  
Governor of Iowa.

By the Governor:

W. C. RAMSAY,  
Secretary of State.

Mr. SHORTRIDGE. Thereafter Mr. Steck filed a contest. That contesting paper or petition will be found on page 9 of the hearings. It contains various allegations; indeed, quite a large number of allegations of fact; and I must assume that it was considered by him or those representing him that if those facts were established, if they were proved, he would establish his right to a seat in this body.

May I emphasize to the thoughtful Senators who do me the honor to listen that certain specific allegations were set forth and appear in the contestant's petition? What rule of law shall govern us here to-day in determining whether the facts alleged have been proved? In all actions at law, in all proceedings in equity, in all criminal prosecutions, in all matters where an allegation is made, the burden of proof rests upon him who makes the allegation. That is a rule of law; that is a rule of law observed in every civilized country; that is a rule of law enforced in every tribunal of justice; and I trust it will be far in the future when, if ever, this body shall cease to be governed by law and by accepted principles and rules of law. The burden of proof rests on the contestant.

The question therefore is, Has this rule of law which places upon the contestant the burden of proof been satisfied?

In aid of the contestee there are certain presumptions applicable to this case, presumptions which the law introduces in support of his certificate of election. I scarcely need to add that a presumption is a deduction which the law expressly directs to be made. There are conclusive presumptions, presumptions which may not be controverted. And there are many disputable presumptions, presumptions which may be controverted. Among the latter class of presumptions is the great presumption, immemorial, honored, respected in every civilized tribunal on this rolling earth, the great and all-embracing presumption that a man is innocent of offense, is

guiltless of any crime or offense charged against him. That great presumption protects alike the princess in her silver slipper laced with gold and the peasant maiden shod in wood. It protects alike the king on his throne and the subject kneeling. It protects us all here and elsewhere. That presumption of innocence of crime or of offense charged is a shield of protection for every official high or low, for every citizen rich or poor.

But there is another important presumption, recognized in the laws in all the States of our Union, and that presumption is that "official duty has been regularly performed." It is found in the codes of the different States. These presumptions prevail and protect unless and until they are controverted and overcome. How may they be overcome? I am repeating almost in *hæc verba* the words of the Senator from Missouri. These presumptions, so important, so vital, in the protection of life and liberty and property rights, must be overcome, thrown down by evidence and by competent legal evidence. I put these questions to the thoughtful minds present. Has this certificate of election been discredited? Has the burden of proof been satisfied? Have these presumptions been overcome, not by imagination, not by theory, not by whim or passion or prejudice, but have they severally been overcome by competent evidence found here in the record before us?

I come next to this great proposition, Mr. President, concerning which much might be said, namely, the power of the Senate in matters of election of Senators. Article I, section 5, of our Constitution provides that—

Each House shall be the judge of the elections, returns, and qualifications of its own Members.

Power, authority to judge, necessarily implies that we shall judge, and in judging be guided by certain principles, rules, and not by prejudice or passion or whim or certainly not by party predilections. In saying this let no man present or elsewhere think or infer that I am imputing to others a decision other than they conceive to be the result of the evidence in this case. I do not assume to be moved by higher motives than those who may differ from me, but I repeat that the power to judge given to us by the Constitution carries with it the duty to judge according to the rules and principles of law.

That brings me in my present remarks to this vital question: By what rule shall we judge under the authority given us to judge—by the rule that follows the State law or by the "rule of intent," so called, said to have been adopted by the Senate? An answer to that question, Mr. President, raises a vital issue, an issue that lifts this case far above persons, far above parties. That issue involves the relation of the State to the Federal Government as that relation affects the right of the State to choose its two Senators. That issue involves the right and the power, the constitutional right and power, of a State to choose its Senators. Has the State that power? The Constitution of the United States gives it that power in specific language, unequivocal, direct, and so plain that we can all understand. Moreover, the Constitution provides that the "times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof." Conceding the right of the State to choose its Senators through the machinery of its own laws, not inconsistent with the Constitution of the United States, should we not in judging of the election of a given Senator turn to and be guided by the constitution and laws of that State?

Mr. President, under the Constitution the State determines who are electors; the State enacts laws for the exercise of the elective franchise, for primary and general elections, for counting votes cast and for whom, and for certifying to the result. We are brought, then, face to face with this question, which we must answer; I must answer at any rate: Shall we ignore the constitution and laws of a State and the result of an election certified to by the governor or the authorized agent of that State? I can not too strongly emphasize how deeply I feel upon that question. To ignore the laws of a State, searching out for the so-called "intent of the voter," would be to ignore the dual form of our government—an "indestructible Union made up of indestructible States." To do so, Mr. President, would be to degrade the State, to deprive it of an integral portion of its sovereignty, and to impair the structure reared by the wisdom of our ancestors. It is conceivable that by doing so a majority in this body, swept away by party passion, in the arrogance of power, might deprive a State of a voice in this Chamber.

Mr. President, I have said that an issue is raised in this case that lifts this contest far above persons—nay more, it lifts far above parties. This is the Senate of the United States.

We are vested with great power; we are charged with grave duty—the duty of preserving the rights of men and of States.

In his noble address when assuming that chair, Vice President Coolidge uttered these memorable words:

To the Senate, renewing its membership by degrees, representing in part the sovereign States, has been granted not only a full measure of the power of legislation but, if possible, far more important functions. To it is intrusted the duty of review, that to negotiation there may be added ratification and to appointment approval. But its greatest function of all, too little mentioned and too little understood, whether exercised in legislating or reviewing, is the preservation of liberty. Not merely the rights of the majority—they little need protection—but the rights of the minority, from whatever source they may be assailed. The great object for us to seek here, for the Constitution identifies the Vice Presidency with the Senate, is to continue to make this Chamber, as it was intended by the fathers, the citadel of liberty. An enormous power is here conferred, capable of much good or ill, open it may be to abuse, but necessary, wholly and absolutely necessary, to secure the required result.

Whatever its faults, whatever its human imperfections, there is no legislative body in all history that has used its powers with more wisdom and discretion, more uniformly for the execution of the public will, or more in harmony with the spirit of the authority of the people which has created it, than the United States Senate. I take up the duties the people have assigned me under the Constitution, which we can neither enlarge nor diminish, of presiding over this Senate, agreeably to its rules and regulations, deeply conscious that it will continue to function in harmony with its high traditions as a great deliberative body, without passion and without fear, unmoved by clamor, but most sensitive to the right, the stronghold of government according to law, that the vision of past generations may be more and more the reality of generations yet to come.

Yes, Mr. President—

the great object for us to seek here, \* \* \* is to continue to make this Chamber, as it was intended by the fathers, the citadel of liberty.

And in order that "union and liberty" may be "one and inseparable"—the words of Webster in reply to Hayne—we must uphold the constitutional power of the States, and that power includes the right to choose their Senators according to their laws.

Mr. President, I repeat, there are principles, there are laws, there are provisions of the Constitution by which we should be guided and governed. By them I shall be guided and governed.

In view of the Constitution of the United States and the laws of Iowa, as I read them, and in the light of the facts as I see them, I have reached the conclusion that the contestant, Mr. Steck, has not established his right to a seat in this body as the duly chosen Senator from the State of Iowa, and if permitted to do so, I shall vote accordingly.

THE VICE PRESIDENT. The time of the Senator from California has expired.

MR. LENROOT. Mr. President, I do not rise to occupy the entire 15 minutes, nor for any other purpose than to explain the vote I am about to cast in this very important matter.

I believe that Senators, in acting upon this matter, occupy exactly the same relation to the contest that a judge upon the bench occupies to the case before him; and I am sure that Senators do approach the consideration of this question from that standpoint.

In the first place, Mr. President, I think it unfortunate that we have not before us a record upon which we may form a judgment except upon one theory of the law. That is to say, if the Senate does not accept the theory of the majority of the committee with reference to the question of the discrepancy between the poll lists and the actual ballots found in the box, then we have before us no record upon which we or anybody could form any intelligent judgment, because the evidence is wholly missing except upon the theory that that discrepancy was wholly immaterial.

But first, Mr. President, the question of the 1,344 ballots, which involves the question of whether Senators shall use their own judgment without regard to any provisions of law in arriving at the intent of the voter, or whether the law of Iowa shall be followed by Senators in arriving at that intent.

It seems to me, in view of the provisions of the Constitution under which the power is practically delegated to the States to make rules for the government of these elections unless Congress itself sees fit to exercise its jurisdiction that is given by the Constitution, that the States must make rules with reference to these elections governing the question of how the intent of the voters shall be arrived at. The State of Iowa has made such a rule. We can not say that it is an unreasonable rule. That being so, it seems to me that we must follow it. Indeed, Mr. President, if we do not, if we shall

take the other theory—that the Senate is not bound at all by any State law in arriving at the intent of voters—then we have destroyed to a very large degree the protection that a State ought to have; because if we are to follow our own views, irrespective of the laws of a State, how easy it is to decide these election contests according to partisanship and through passion or prejudice, as the case may be?

That being so, Mr. President, I am forced to the conclusion that the law of Iowa with reference to arriving at the intent of the voters being a reasonable law, we must be governed by it; and I shall be forced to consider that those one thousand three hundred and forty-odd votes should be counted for Mr. Brookhart.

That leaves a majority for Mr. Steck of 46 votes; and the only question then remaining, it seems to me, is the one of the discrepancy between the poll lists and the ballots found in the box.

Mr. President, I do not believe that the Senate should assume that wherever there is any discrepancy any presumption should arise that the error is wholly in the poll list, because that must be the presumption if the discrepancy is to be thrown aside. I realize, as I think every Senator must, that natural human error would result many, many times in a discrepancy of 1, 2, 3, 4, or possibly 5 ballots between the poll list and the ballots found. I do not say where the line should be drawn as to what may be termed natural error and where the presumption should arise that something has happened, either by reason of acts of the election officers or subsequently, to affect the situation, changing the result of the official count. But where we have a discrepancy of as high as 6 or 7 per cent—that is, where there are 20 less ballots found in a ballot box in which the total vote of the precinct is only 256—that is too large a discrepancy to be accounted for by natural human error, according to my judgment; and where there is such a discrepancy—and we have the evidence of it before us—and where it was properly brought to the attention of the committee, it seems to me that we must take notice of it, and we must each form our own judgment as to whether that was a discrepancy where we should conclusively presume that the error was in the poll list and not in the number of ballots, or presume that something has happened somewhere so that the ballots in the box do not accurately represent the vote that was actually cast at that election.

I appreciate that there have been stipulations and waivers and estoppels urged. We have no evidence before us, we have none in the record, of the 1,068 precincts where there are discrepancies. We do not know what the discrepancies are in a single one of those precincts except the few that we find in the record. It might be that if we had all the evidence before us, it being an average of only three, if we were to indulge merely in presumption, a difference of three should not be held to affect the result, and the recount should be taken rather than the official count. But we do find in the record, Mr. President, five precincts in four of which the recount was taken and in one of which the official count was taken; and as to those four precincts concerning which there is question, it seems to me that the objection was seasonably made; the notation was made upon the work sheet that in those particular cases the question was submitted to the committee; the attorney for Mr. Brookhart properly and in a timely way raised the question before the committee; and it seems to me the only criticism that can be indulged—and it is a just criticism—is that in the case of those five precincts, instead of the protested ballots going into the general mass of protested ballots, they ought to have been kept segregated by each precinct; and if that had been done the committee and the Senate could have had the fullest information with regard to those precincts.

Therefore, so far as my own conclusion is concerned, I feel myself limited to the consideration of these particular precincts, starting in with a majority of 46 for Mr. Steck; and the first one is the Estherville precinct, where there is a shortage of 20 votes, where the vote came in a sealed sack, as did all of the other three, and in which Mr. Brookhart loses 66 votes by the recount.

As to this precinct, I can not understand how the presumption that has been urged that this is merely a natural error or discrepancy can be maintained, because it appears from the record itself that after the discrepancy was discovered 34 more ballots were sent to the committee, purporting to come from this same precinct; and when those 34 ballots are counted, instead of having a shortage of 20, we have an excess of 10. That being so, Mr. President, it seems to me that utterly destroys any possible presumption that the discrepancy of 20 was a natural discrepancy that can be accounted for through error in the poll list. That being so, it seems to me there is nothing to be done except to resort to the official count.

In the case of the Bear Grove township there was a total vote of 256. There is a discrepancy of 20, nearly 6 per cent of the entire vote of the precinct, Mr. President. Every Senator has had experience, I think, as I had in my early days, in acting as election clerk; and is it possible to assume that out of a vote of 256 voters there would be a shortage of 20 unless there be mistake or fraud? And there is no evidence of fraud. So it seems to me conclusive that there must be a mistake in this particular precinct. We can not account for it through any natural discrepancy. That being so, it seems to me that we are again compelled to resort to the official count.

As to those two precincts they overcome the 46 majority. As to what the precincts are other than those set out in the record, we do not know. I wish we did. I think it very unfortunate that the Senate has not the discrepancy in each precinct. I think it very unfortunate that the contested or protested ballots were not kept segregated in each precinct, so that the Senate would have full opportunity to pass upon the merits of each precinct and decide for itself, or each Senator for himself, as to a discrepancy as to whether it was one that could naturally be accounted for through human error, or accounted for through mistake and an absence of ballots, a shortage of ballots for some cause or other.

So, Mr. President, so far as I am concerned it seems to me that as far as this record goes neither party has made a case. Taking these precincts concerning which we do have evidence, it would seem to me that Mr. Brookhart had a majority, but only by resorting to the official count rather than to the recount. Therefore, my mind has come to the conclusion that in this kind of a record—and I do not reflect in any way upon the committee; they gave us this record in accordance with their theory of the law, and we have not the evidence upon which to arrive at a conclusion upon any other theory of the law—realizing that the burden is upon the contestant to satisfy the Senate that Mr. Brookhart was not elected and that he was, and believing, as I do, that that burden of proof has not been successfully sustained, see nothing to be done, so far as I am concerned, other than to vote to seat Mr. Brookhart, for the reasons I have stated.

Mr. NORRIS. Mr. President, in the few minutes at my disposal I desire to take a bird's-eye view of the entire situation. To begin with, there was an election in Iowa, after which an official certificate of election was issued to Senator Brookhart, giving him a majority of over 700 votes. There has not been a single syllable of testimony anywhere, not a claim made anywhere, that there was any fraud, anything wrong, or even any mistake in the official count. It stands before the Senate now untarnished and undefiled.

Mr. GEORGE. Is the Senator speaking of the official count?

Mr. NORRIS. The official record, yes; the official count.

Mr. GEORGE. I do not want to take the Senator's time—

Mr. NORRIS. I yield.

Mr. GEORGE. But in every class of precinct the count was impeached.

Mr. NORRIS. That would naturally follow the institution of a contest. Not a single person has testified to any fraud at the election, any misconduct of the judges in counting the ballots, nothing of that kind. Of course, in a general way, there could not be a contest without an attack of the official count. I concede that.

Who made the official count? And I can say this without censure, I know, because the able Senator from West Virginia has spent a good share of his time in showing that everybody in Iowa knew and believed that Senator Brookhart was not a good Republican. Who held the offices? Who were the judges and the clerks of election all over that State? They were either Republicans or Democrats. The Democrats were for Steck; and the Republicans—at least those who followed the State central committee—were against Brookhart. So, without ascribing to anybody any fraud, it is fair to say that practically all of the election officials of the State of Iowa were the political enemies of Senator Brookhart. I am not charging a single one of them with doing a thing he did not believe to be right, but it is fair to say that they would not give Brookhart the benefit of a doubt. The doubts all over that State would be resolved, as would be natural to expect, in favor of Steck. So, if there is any shade of objection to the official count, it would be that Steck got the best of the doubtful conditions. Yet, notwithstanding all that, his political enemies gave Brookhart a majority in the State of Iowa of over 700 votes.

That is not all. There are certain precincts in Iowa where the vote is had by machine. A machine is a cold, mathematical proposition. There is no sentiment, no feeling, about it. Everything is done by machinery. The machine does not lie; it can not lie. It reacts, and when it records the votes, and the machine is kept locked—and it is conceded that the machines

in Iowa were kept locked—the result stands. Nobody can change it. Nobody can pull a ballot out or put another one in.

It is remarkable that when this contest started and the counters began to count the votes, in the machine precincts Brookhart gained more than 700 votes, simply demonstrating again that where the machinery of the election was mainly against him they did not always read the results right. They made mistakes in not counting the straight votes for Brookhart; and when the recount was made, he gained. In the machine precincts there was no chance of fraud. I submit there was no opportunity to change a single vote. Yet Brookhart gained, and with the official count he has more than 1,500 votes to the good.

Then we commence to recount the paper ballots, where, if the same rule had applied—and there was no reason why it should not apply—and no mistake had been made and there had been no fraud, we would have expected Brookhart to have made a similar gain. The ballots were counted by his political enemies, and that is where opportunity for fraud existed, if it existed at all. What happened? When we get into the paper ballots, Brookhart commences to lose. There we commence to find that the number of names of the men who voted in a given precinct does not correspond with the number of ballots brought here before the committee. We find differences of over a hundred in one voting precinct, 25 and 30 in some other precincts that are mentioned in the minority report.

Can anybody conceive, in a precinct of two or three hundred voters, that there should be a difference of 20 between the number of ballots in the box and the number of persons who voted at the election? Would it not have been true that the official counters would have found that out the night of the election? Can anyone conceive that that condition could exist? We might find a change of one or two, or perhaps three, occasionally.

Another thing, in one of these precincts, as the Senator from Mississippi, a member of the committee, tells us, there were 20 ballots short, 20 less ballots sent to the committee than the number of persons who voted in that precinct, and Brookhart lost just exactly 20 votes. Does anybody believe that would happen? Does anybody think for a moment that it could be an accident that 20 votes should be taken out and that every one of those votes would be a Brookhart vote?

Again, Mr. President, we find that in Winterset precinct, Madison County, the ballots sent did not correspond with the number of persons voting, and the committee took the official count. I think they did the right thing. Brookhart gained, in that case, 198 votes. Then we go on down to Guthrie County, Bear Grove township, where there was a shortage of 20 votes out of less than 500 votes cast. It would have been to Brookhart's advantage to have followed the same rule and take the official count, but the committee did not take it. They counted the ballots, and Brookhart loses.

Then they go on down to Emmet County, Estherville township, where there was a shortage of 20 ballots, and later on somebody sent to the committee 34 more ballots and said they belonged to that precinct. The committee counted the ballots in that case. It was to Steck's advantage and Brookhart's loss. They did not follow the rule. They established what I believe to be the legal rule as to Winterset precinct in Madison County. They took the official count. Then we go down to Wapello County, Center township, where there was a shortage of 22 ballots. If they had followed the rule, the correct rule, and taken the official count in that case, Brookhart would have been the gainer. But they did not do it. They took the reverse of the rule and counted the ballots, and Brookhart again was the loser.

There were two or three others mentioned in the minority report, but I shall not go over it. However, it looks to me as though this rule is just, is legal, and is the only rule honest men can take. We can not take a precinct where there are 20 votes short and count the ballots and arrive at the correct result of the election in that precinct. It is physically impossible to do it, and every man knows that it is impossible. It is no answer to say that Brookhart's attorney did not object in time or that they agreed to do this, or anything of the kind. It has been disclosed, and it stands undisputed, that those are the facts, and no amount of argument can get away from it or get around it. If we followed the rule established in the first precinct I have named and took the official count, then it is conceded, it stands uncontradicted, that Brookhart would be ahead.

Much has been said about these 344 votes, and I am astounded that anyone who claims to be learned in the law should thrust aside the law of Iowa and refuse to count those votes for Brookhart. It must be remembered that not all of those votes omitted only the name of Brookhart. They omitted

Brookhart and others, sometimes only Brookhart; but a large majority of the ballots omitted the names of other candidates besides Brookhart, and the counters of the votes in Iowa, faced with the law of Iowa, counted them as straight ballots.

Senators, it seems to me that if there is any place in the world where we ought to stand up for law and order it is in this body. Are we to send out to the country the word that we are going to cast aside the solemn statutes of Iowa? It is no answer to say that the election law was passed only a few days before the election, because it likewise stands uncontradicted that that law only put into statute form what had been the law of Iowa for years and had been so declared by the Supreme Court.

Are we to say to the country that we are above the law of a sovereign State? Are we to establish a precedent here that we disregard law in the Senate of the United States, that we violate the Constitution of the United States? Are we to establish that kind of a precedent here, merely for the purpose of putting one man out and putting another man in?

It seems to me, Mr. President, that there is but one side to that legal proposition. There can be no legal dispute about it. Again we come back to the fact that the official count of Iowa gave these votes to Senator Brookhart, as the law provided; and if the law of Iowa provides that these votes shall be thus counted, we are estopped, unless we want to be violators of the law, from taking any other position.

MR. ASHURST. Mr. President, when one is about to prepare an unpalatable dish for a fellow being it is well to reflect, "How would I like to partake of this dish I am preparing for my fellow citizen?"

The Senate has never established a rule to follow in contested-election cases. Therefore we are relegated to the law of the particular State, as has been pointed out by the Senator from California [Mr. SHORTRIDGE], the Senator from Missouri [Mr. REED], and the Senator from Wisconsin [Mr. LENROOT]. The Senator from California read the credentials of the sitting Member, Mr. Brookhart. Three decisions of the Supreme Court of the State of Iowa hold that before such a *prima facie*, that is to say, a certificate, can be overthrown, clear and unmistakable evidence must be introduced to that effect. We are asked to overthrow a certificate, regular on its face, held by the sitting Member, upon what? Upon a shortage of 3,000 or more ballots, and we are asked to count the absent ballots against the sitting Member. I decline to do so.

Two tally sheets are kept in Iowa under the law, and where the ballots are absent it is the duty of the contestant to bring both tally sheets in order that we may have a complete check upon the matter. That was not done. We are asked to overthrow the *prima facie* upon an absence of ballots. We are asked to overthrow the certificate upon the absence of one of the tally sheets.

MR. CARAWAY. Mr. President, will the Senator yield?

MR. ASHURST. I have only 15 minutes, but I will yield.

MR. CARAWAY. Oh, never mind.

MR. ASHURST. I hope the Senator will at least take the floor and make some answer to what I am saying.

MR. CARAWAY. All right; I shall do so.

MR. ASHURST. The Senator spent a day and a half arguing the case, and I hope that he will now take a minute or two and tell me why they did not bring both tally sheets here. I pause for a reply.

MR. CARAWAY. Does the Senator know they were not both here?

MR. ASHURST. I do; that is what your report said.

MR. CARAWAY. Will the Senator kindly show me that statement in the record or the report?

MR. ASHURST. I ask the Senator what authority he had to count the absent ballots against the sitting Member?

MR. CARAWAY. According to the sworn statement of the gentleman for whom the Senator from Arizona is going to vote. We had between 1,000 and 2,000 votes more on the recount than were originally counted. There were nearly 7,000 votes that were determined on the recount, and if the Senator is not going to be bound by them, then he would have to return to the official count.

MR. ASHURST. That is not an answer to my question as to why the committee counted the absent votes against Brookhart.

MR. CARAWAY. They did not, and nobody has asserted that they did. There is not a line of evidence that we counted the absent ballots against anybody.

MR. ASHURST. I assert that you did.

MR. CARAWAY. The Senator can not find it in the record.

MR. ASHURST. The *prima facie* has not been overcome. The Senator from Arkansas will be a candidate for reelection this fall and 31 other Senators will be candidates in various

States. I hope the Senator from Arkansas will be reelected. He contributes to the life and strength of the Republic. He provides the humor of the Senate. He is the king's jester of the Senate. When he comes here with a certificate, or if any other Senator presents a certificate and the same is challenged, what will he do? He will plead with the Senate not to follow the rule that he is to-day invoking in the Steck-Brookhart case. He will plead with the Senate to follow the rule that I invoke to-day; that is, that the certificate granted by the State of Arkansas shall not be overcome by defective evidence.

The able Senator said that Brookhart waived the question of discrepancy of ballots. That was clearly answered by the Senator from Montana [Mr. WALSH]. How could the Senator waive any point as to the contents of the sacks and packets until he knew the number of ballots therein, and that could only be ascertained by a count of the ballots in the sacks? It would have been a senseless and untimely thing to object until the ballots were counted and ascertained to be short, and yet the anvil chorus has been loudly proclaiming that he waived the question of shortage of ballots.

I am inclined to agree with the statement of the Senator from Wisconsin [Mr. LENROOT] that at best and at the most it is a mere guess. Conceding integrity of opinion to every other Senator, which I do—I am not more earnest than the Senator from Arkansas, but searching the recesses of his own heart he is unable to say that it is more than a mere guess.

Mr. CARAWAY. Oh, I deny that absolutely. There is not a single fact on which to base that statement.

Mr. ASHURST. Very well, the Senator denies that statement. He does not even know a good guess when he sees one.

Mr. CARAWAY. At least, I do not make up my mind until I have seen the facts.

Mr. ASHURST. And even then the Senator does not.

Mr. CARAWAY. Oh, the Senator can not say that.

Mr. ASHURST. I made up my mind as soon as I heard the Senator's speech made.

Mr. CARAWAY. Oh, that is not so.

Mr. ASHURST. I must hurry along.

Mr. CARAWAY. I think the Senator had better do so.

Mr. ASHURST. I am not anxious for any swordplay with that scintillating wit, that rather heartless speaker, the Senator from Arkansas. I am not particularly anxious to get into a duel of words with him, but with right on my side I am not afraid to enter into such a contest.

Mr. CARAWAY. Mr. President, did the Senator ever look at one of the votes that was cast?

Mr. ASHURST. I did.

Mr. CARAWAY. How many did the Senator examine?

Mr. ASHURST. I was not on the committee.

Mr. CARAWAY. There are 4,000 of them. How does the Senator know how they were cast if he did not see them?

Mr. ASHURST. We commissioned the Committee on Privileges and Elections to make an examination of the ballots and it did not do so.

Mr. CARAWAY. But we did do it. The Senator is entirely mistaken about that.

Mr. ASHURST. Did the Senator examine the ballots?

Mr. CARAWAY. We examined every ballot except those ballots which the Senator from Iowa [Mr. Brookhart] authorized his attorney to agree were not voted for him.

Mr. ASHURST. How many ballots did the Senator examine?

Mr. CARAWAY. I examined about 4,000.

Mr. ASHURST. There were over 900,000 cast.

Mr. CARAWAY. Oh, but the Senator from Arizona—

Mr. ASHURST. We commissioned the Committee on Privileges and Elections to examine the ballots and they did not do it. Now they attempt to overthrow the prima facie after they have been remiss in their duty.

Mr. CARAWAY. If the Senator thinks he will get anywhere by making a loud noise, I am perfectly willing for him to try it.

The VICE PRESIDENT. Does the Senator from Arizona yield to the Senator from Arkansas?

Mr. ASHURST. Certainly, I yield.

Mr. CARAWAY. The Senator from Arizona must bear in mind the fact that Mr. Brookhart agreed to have the votes counted by having his representatives present, without having the members of the committee examine each individual vote. The Senator knows that.

Mr. ASHURST. But the Senator did not examine all of the ballots, and that is what he should have done. He is the instrument of the Senate.

Mr. CARAWAY. But not of the Senator from Iowa.

Mr. ASHURST. He is commissioned by the Senate to act for the Senate.

Mr. CARAWAY. I deny that.

Mr. ASHURST. The instrument of the Senate.

Mr. CARAWAY. Yes; put it that way.

Mr. ASHURST. I withdraw the term "creature." I do not intend to bring the word "creature" into juxtaposition with the Senator.

Mr. CARAWAY. There are times when that is permissible. Would the Senator have accepted the recount where the parties agreed upon it?

Mr. ASHURST. There is no authority of any man to stipulate one man into the Senate and one man out. According to the Senator's philosophy, it would have enabled us to stipulate Mr. Lorimer into the Senate and somebody else out. I decline to allow a seat in the Senate to be stipulated away.

Mr. CARAWAY. Is not the Senator conscious that he is acting under stipulation when he—

Mr. ASHURST. I am not acting on stipulations.

Mr. CARAWAY. Would the Senator accept a stipulation of any kind?

Mr. ASHURST. I mean by that that the Senator can not overcome the prima facie in that way.

Mr. CARAWAY. The stipulation helps to do it.

Mr. ASHURST. You do not overcome the prima facie in that way. In this contest, Mr. President, I have not charged the committee with bad faith.

Mr. CARAWAY. Oh, of course, not.

Mr. ASHURST. The Senator mumbles sotto voce "of course, not." I am charging the committee with the failure to perform that duty which the Senate imposed upon it. Moreover, if I have not the capacity to indulge in sword play with the Senator, I have, at least, the fortitude to endure his thrusts.

At 5 o'clock this contest is to be disposed of. When the din and sensations of this hour are forgotten, when all that is said and done here to-day is gathered into—I was about to say history, but history will not even deign to notice it—but when it shall have been gathered into musty tomes, when we have left these seats forever, no man will look back with pride upon the fact that he voted to overcome a prima facie and displace a Member legally elected and seat another man on such flimsy testimony.

When in doubt, Mr. President, we should make a bee line for justice. Then we will not have to live eternally with that feeling of self-reproach and reproof.

Let this case be decided on its merits. I desire that a Democratic Senate shall be elected in 1926 and that we will have a Democratic Senate in 1927. No well-informed man doubts other than that the Democrats will triumph in 1926, but let us not obtain one seat "purchased." Let us not obtain even one seat to which we are not entitled. Let us come with clean hands on the 4th day of March, 1927. Let no coward thought of praise or blame enter into this contest to decide the issue.

The VICE PRESIDENT. The time of the Senator from Arizona has expired.

Mr. CARAWAY. Mr. President, this case is decided, and I am not unconscious of the fact that nothing I shall say will change its result. However, I do not mean to let any Senator allege as his reason for voting for Mr. Brookhart that it was all a guess and he had as good a right to guess as the other fellow, which, of course, if it is a guess, is true.

There is not a Senator on this floor, either those sitting in front of me or those on the other side, who examined the votes cast in Iowa who will rise here now and say that Mr. Steck was not elected. There is not a Senator on either side who cared enough about right or wrong in this contest to look at the ballots in dispute who will stand up and say that Mr. Brookhart was elected. I will pause for a reply just as long as Senators want me to pause so they give me one minute before my time expires. There is not a Senator who saw the ballots who will stand up here and say that.

Mr. ASHURST. I stood up and said that I believed Mr. Brookhart had been elected.

Mr. CARAWAY. The Senator said that he had not seen the ballots.

Mr. ASHURST. No; I have not.

Mr. CARAWAY. Then, of course, the Senator's belief is founded upon—I will not say what. It is so obvious, what is the use to say it? When the Senator says he never saw the ballots, does not know anything about them, and therefore he is going to vote for Brookhart; if that is a reason, why should anyone vote for Steck?

Mr. ASHURST. Mr. President, will the Senator yield?

Mr. CARAWAY. I yield.

Mr. BRUCE. Mr. President, may I interrupt the Senator from Arkansas for a moment to say that the Senator from Arizona went further than that—

The VICE PRESIDENT. Does the Senator from Arkansas yield to the Senator from Maryland?

Mr. BRUCE. The Senator from Arkansas went further than that.

The VICE PRESIDENT. Let there be order in debate.

Mr. CARAWAY. I yield to the Senator from Maryland.

Mr. BRUCE. The Senator from Arizona went further than that and said that Senators in this body who ventured to differ from him propose to steal the seat.

Mr. CARAWAY. Of course it is not stealing provided you vote his way. I say again, sir, and I know it is true and nobody will deny it, that there is not a man on this floor who examined the votes who will stand up now and say that Mr. Steck was not elected and that Mr. Brookhart was elected. I know that to be so. No honest man could have gone through the votes and reach any other conclusion.

Senators can not change the facts; God Almighty can not do that. They can change their votes in the Senate sometimes and make statements that others do not have time to examine; they can vote against a man who receives a majority of votes and put a man in the Senate that did not receive a majority; but they can not change a fact; they can not change the fact that the people of Iowa did not vote the way some Senators talk. Senators who are voting on this question without any reference to how the votes were cast can make any excuse they want to people who do not know the facts, but they can not come here with a statement like the one which has been made and expect anyone who knows the facts to accept it because it is not true, and nobody is going to accept it.

The Senator from Missouri [Mr. REED] said that class 3 and class 5 were alike. They were not any more alike than class 3 and class 16. But what difference does that make to one who is going to vote his political sentiments and then denounce other Senators for wanting to seat Steck because they will not help him to seat Brookhart?

Let me say to those who want this cause decided because they say there was a shortage of 3,300 votes, why, God bless your soul, if you decide it the other way you will do it in the face of 7,000 votes. Disfranchising the people of Iowa, and doing it by your vote! Those who would rather seat one contestant than another because they have some prejudice in the matter, because they served on a committee with the incumbent at one time, can do so if they desire, but they will not change a fact, they will not make it right, and they will not make anybody believe that it was right.

Now, it is said that the parties to the contest could not enter into stipulations. Why, every Senator who votes on this question is stipulating as to 995,000 votes. You never repudiate a stipulation until it hurts the man you have resolved to vote for, and then you join him in repudiating his solemn stipulations and say that a stipulation could not be made; but you do not repudiate a single stipulation that helps him. You do not fool anybody by that sort of argument; you do not make anybody accept it.

The Senator in effect charges the committee with dereliction of duty. There is no man on the floor of the Senate, including the Senator from Arizona, who if he had been on that committee would have handled every one of those votes. Why, everyone who has ever practiced law knows that attorneys' stipulations are accepted and recognized in every court from that of a justice of the peace to the Supreme Court of the United States. We do business with each other under the belief that men will tell the truth and honorable men abide by their agreements. We would not practice law a day without such agreements. No one ever tried a lawsuit in his life that there was not some kind of an agreement to which the parties lived up.

I do not care personally about the question of sustaining the committee or not sustaining it. I want Senators to vote their convictions; but I should like to have Senators before they do so to examine the facts. I would not want them to ignore the facts and expect us to sit still and listen to such tirades as we have heard and accept the statements thus made as true. They are not true; and yet Senators who have not examined the facts talk about the dereliction of the committee.

I thought it was the duty of a Senator before he made up his mind to examine the facts. It does not do any good to accuse some one else of a failure to examine the facts, base your conclusion upon some other man's failure of duty, charge us with dereliction, and admit in the same breath that you are derelict and have not taken the time and have not availed yourself of the opportunity to look at the votes, when it would not have taken you an hour to have done it.

I may be the king's jester. It may prove something to the Senator from Arizona, but, thank God, there is one difference between him and me in this case. I know what the record

shows; I know what the vote was, and I can prove by every Republican member of the committee who served with me, who sat there and examined the facts, that there was not a single question about who won or who lost until we had gone through with the votes. If that is not true, there are enough Senators on the other side of the Chamber who will stand up now and say so. There is not one of them who is going to do it, because they all know they can not do it and keep their reputations for speaking the unsullied truth. Senators charge us with dereliction, but are making up their minds as to how they shall vote when they do not know and have not examined the record, as members of the committee did. Although they had an opportunity to do it, they would not do it, and then come here and charge us with dereliction of duty. Well, Mr. President, it sounds well. Denunciation may be good politics; I do not know as to that.

The Senator from Arizona said I would come back, but let me say this to him: If I should come back here with a contest on my hands and I should go into a recount of the votes and should have to keep my seat by breaking my stipulations and he should vote for me under those circumstances, so help me, Almighty God, he and I would speak the same language no more forever, because I want to be seated, if I am seated at all, so that I may look any man in the face and say I got the seat because I was entitled to it.

Mr. ASHURST. Mr. President, the Senator's majority will be so great he need not worry about any contest.

Mr. CARAWAY. If it should be, I should expect the Senator from Arizona to vote against me, because I will not come here without a majority; and I say I know he will be against me, because Mr. Steck has a majority and he is against him.

Mr. ASHURST. I will never vote to overcome the certificate of the State of Iowa by mere presumptions and by guesses.

Mr. CARAWAY. There is not any such presumption.

Mr. ASHURST. I will follow the Iowa law.

Mr. CARAWAY. Does the Senator know what the result would have been if we had followed literally the letter of the law in this case?

Mr. ASHURST. Does the Senator mean the law of Iowa?

Mr. CARAWAY. Yes; in this case.

Mr. ASHURST. Yes; I would seat Brookhart.

Mr. CARAWAY. On what does the Senator base that?

Mr. ASHURST. On supreme court decisions.

Mr. CARAWAY. Did the supreme court ever say anything about the Brookhart-Steck contest?

Mr. ASHURST. No; but I refer to the reasoning of the supreme court.

Mr. CARAWAY. The reasoning is the other way. Does the Senator know how many votes were given to Brookhart that the law of Iowa would have stricken down? When a voter who did not appear to know what the law was but honestly tried, as we thought, to vote for him, we gave the vote to him.

Mr. ASHURST. Mr. President, will the Senator yield?

Mr. CARAWAY. Yes.

Mr. ASHURST. The Senator tried to ascertain the intent of the voter?

Mr. CARAWAY. Yes.

Mr. ASHURST. All right. Suppose 2,000 voters had written on the ballots "I hereby vote for Senator Brookhart," you would not have counted those votes for him, would you?

Mr. CARAWAY. Every one of them.

Mr. ASHURST. I do not think you would.

Mr. CARAWAY. I know we would. There were votes counted for Brookhart where there was no cross in the circle and no cross in the square opposite his name. The Senator from Arizona did not know that, but if he had taken two minutes he could have found it out. Some voters wrote in the name "Brookhart" without an initial, and they spelled it in every imaginable way, but wherever Brookhart's name got on the ballot the vote was counted for him, although the voters neglected every legal precaution to make it a vote for Brookhart. The committee gave him that vote. If the Senator had examined the record, he would have known it.

According to legal intent, as expressed by the Senator from Montana, Brookhart was beaten by a greater majority than that indicated; but the Senator from Montana the other day said that he was going to regard no stipulation, but only take certain townships and reach his conclusion, and the Senator from South Carolina [Mr. BLEASE] said, like the Senator from Arizona a while ago, that he was not going to overturn the State certificate; and yet only a few weeks before he voted against the seating of Mr. NYE.

Mr. BLEASE. Mr. NYE was appointed by the governor.

Mr. CARAWAY. Well, he had a certificate.

Mr. BLEASE. Brookhart was elected honestly by the people.

Mr. CARAWAY. I repeat, Mr. President, that every vote that was ever suggested by any man on either side was accounted for. These votes were brought here in accordance with Senator Brookhart's agreement. He denied it; but afterwards there was found a telegram from his lawyer to the county auditors showing what I have said to be the fact, and everybody knows it. There were nearly 7,000 more votes than the officials had allowed to be counted in Iowa. There was a discrepancy in the machine vote. Brookhart got 774 plurality by recounting them and nobody complained of that. The Senator from Arizona never heard of it.

Mr. ASHURST. Mr. President, will the Senator yield to me at that point?

Mr. CARAWAY. Yes.

Mr. ASHURST. If there were no stipulations in the case, would the Senator vote to seat Steck?

Mr. CARAWAY. Yes, sir. I would, because we went through the votes and ascertained that Steck got a plurality. I have never seen Steck until within the last few days, and I never discussed the merits of the case with him in my life. The other party to the contest went all around the Senate and, wherever he could, inoculated Senators with his views, and they come here and vote for him.

When the Senator from Arizona sits by his fireside and congratulates himself that among all the corruption and the dishonesty in the Senate he himself escaped pollution from all these things he will at least be the only one who congratulates himself.

Mr. ASHURST. Mr. President, will the Senator yield?

Mr. CARAWAY. I yield.

Mr. ASHURST. The Senator is quite humorous.

Mr. CARAWAY. I had not intended to be.

Mr. ASHURST. The Senator is most humorous when he tries to be serious.

Mr. CARAWAY. That is, when I discuss the Senator from Arizona; the subject accounts for that. [Laughter.]

Mr. GEORGE. Mr. President, I do not know that I shall consume the entire 15 minutes allotted to me; but I wish to draw the attention of the Senate to the one question in this case.

The Senator from Wisconsin [Mr. LENROOT] very properly said that there was but one question, though he narrowed and restricted the question and devoted his attention to the four or five precincts in which there is a discrepancy between the poll books and the number of ballots found on the recount. The particular precincts to which reference was made appear in the official report, but these precincts are the extreme cases out of 1,068 precincts; that is all. There is but one rule invoked with reference to the four precincts, and that is, there being a discrepancy, it is said to be the duty of the Senate to go back to the official count.

The 67 alleged unsealed precincts to which reference is made present exactly the same question. That is, a discrepancy appearing in those cases between the number of names on the poll list and the actual ballots in the box, it is said to be the duty of the Senate to go back to the official count in those precincts.

Therefore, Mr. President, this whole case presents, as I tried very earnestly to say in my presentation of it to the Senate, but one question—one single question. It is not fair to take the four extreme cases where, by virtue of a return to the official count, Mr. Brookhart would gain; nor is it fair to select out of the whole a few precincts in which Mr. Steck, by a return to the official count, would gain.

For instance, 68 precincts were selected and set out in the official report, not as illustrating a fair way to deal with the question but for the purpose of illustrating one thing, and that is that you can pick out certain precincts and go back to the official count and you can bring about a gain either for Steck or for Brookhart; so that the question fairly presented is, What effect is to be given to the names appearing on the poll books where the ballots found by your committee are actually less than the number of names on the poll books, taking not particular precincts to the benefit of Mr. Brookhart by the application of the rule invoked or other particular precincts which, standing alone, would benefit Mr. Steck by the application of the rule invoked?

Undoubtedly, on the ballots actually counted by your committee, if once they are conceded to be good ballots and all of the ballots cast, there is but one verdict that can be rendered in this case. Under the admitted facts, the count made by your committee gives to Steck a plurality of all the votes cast in the election. Indeed, there is no dispute about it, because in that event the necessity for the rule now sought to be applied would not arise.

Now, I am going to ask the Senate to consider fairly and dispassionately for just a few minutes the law of Iowa with reference to the poll books.

It undoubtedly is the law that the ballot unimpeached is always the higher and better evidence; and that is not the law merely in counting the vote on the day of election. It is the law of contested elections. The law of Iowa requires the preservation of the ballots for six months—for what purpose? I ask those Senators who invoke the rule of State rights; for what purpose? For one purpose, and that is to enable the candidate who has been defrauded, or who thinks he has been defrauded to contest the election. Where can you contest an election for Senator? In the State? The State has no jurisdiction over it. In this body—in this body only.

For six months after the election the law of Iowa provides for the preservation of the ballots for but one purpose—for a contest of this election—and no tribunal has the power or the right or the authority to entertain a contest over a seat in this body save the Senate of the United States.

Mr. President, when on election day the votes are canvassed—and I beg Senators to notice this, because the case is practically settled on the law of Iowa, if indeed it is not actually settled—on the day of election, when the canvassers count out the votes, it is made the duty of the judges to place all of the ballots except—and note the exception—to place all of the ballots in the box except those marked "defective," or rejected as double, after having folded them twice, on a pliable wire, both ends of the wire to be sealed, and then to place the ballots thus sealed in a sack, the sack itself to be sealed.

The law of Iowa does not require that every ballot shall be placed in the container, because from that container, under the letter of the law of Iowa, are to be excluded ballots rejected as double, defective ballots, or rejected ballots; and not only that, but I beg Senators to listen to law: It is made the duty of the judge, after having doubly sealed the ballots which are to go up to the county seat, to return all the ballots to the officer from whom they were received, who shall carefully preserve them for six months, and the statute is mandatory that he shall at once return the ballots.

Now look at the statute dealing with the poll book:

In each precinct one of the poll books containing the aforesaid signed and attested return and one of the registration books, if any, shall be delivered by one of the judges within two days to the county auditor.

When you deal with the ballots, they are to be twice sealed and at once carried up to the county seat. When you deal with the poll books, under the law of Iowa the election judges may retain them in their possession for two days; and that is not all. The ballots are doubly sealed; the ends of the wire running through the ballots are brought together and sealed; and then the sealed ballots are placed in the container, and the container itself sealed; and yet the poll book, which we are told imports verity, the poll book that must upset the solemn verdict of the people of Iowa, may be retained in the hands of the judges for two days, and it is never sealed under the law of Iowa. There is not a requirement that it be sealed. It goes up to the courthouse and is but a public document, where anybody may falsify it by adding names to it and subtracting names from it; and yet you are asked to overturn a recount fairly and honestly made upon the single excuse that there is a disparity between the number of names appearing on the poll books and the actual ballots found in the box and counted by your committee.

Mr. REED of Missouri. Mr. President, may I interrupt the Senator?

Mr. GEORGE. I yield for a question.

Mr. REED of Missouri. The Senator has dwelt on the stringing of the ballots on the wire. All that it would be necessary to do in order to have a shortage of the ballots on the wire would be not to put them there in the first instance, and then, no matter how much you sealed the wire, the ballots would not be there.

Mr. GEORGE. Exactly. I said in my argument the other day that if there was any fraud it occurred in the 1,068 precincts in Iowa; and in order to establish it, though there is not a badge of it here appearing except the alleged proof that springs out of a disparity between the number of names on the poll book and the ballots in the box, you will have to convict nearly 5,500 men scattered all over the State of Iowa of fraud.

Mr. REED of Missouri. No; I do not want to take the Senator's time, but that would not follow at all. There might have been fraud in some precincts and not in others.

Now about the book: The Senator says it was not sealed; but the only way the book could be changed would be by forgery, by somebody going out and writing in or eliminating some names.

Mr. GEORGE. Exactly.

Mr. REED of Missouri. And if that had been the case would not Mr. Steck have promptly shown it when he was confronted with the fact that there was a surplussage of ballots? Was not the burden on him to show it?

Mr. GEORGE. There was no surplussage of ballots, Mr. President.

Mr. REED of Missouri. I should have said a deficiency of ballots.

Mr. GEORGE. The point I make, and the point I insist on, is that under the law of Iowa the mere shortage, or alleged shortage, of ballots is not taken into consideration; and I could demonstrate it if Senators wished it to be demonstrated. I said the other day that the poll books had been sent back to Iowa. Five of them fortunately remain here; and on three of them out of the five you will find a less number of votes actually counted for any set of officers than the names on the poll list.

For instance, in this particular poll book, in Union Township of Adair County there are 209 names on the poll book, and yet the highest number of votes counted for any candidate or candidates is 206, or an actual shortage of 3 ballots.

Mr. REED of Missouri. Mr. President—

Mr. GEORGE. Just a minute; my time is nearly out. I think I will anticipate the Senator. But it is said that there might have been no votes; three of the voters might not have voted for the two candidates in the election who together received the highest number of votes. So they might not have; but examine that book. These judges merely sent it up. The auditor at the county seat declared the result. Not one word is said about a shortage; not one word explaining that discrepancy, and yet the result of that election was declared. Manifestly the discrepancy was not considered because it is nowhere noted. Yet we are asked to reject the recount on a ground not even taken into consideration by the officials of Iowa.

The VICE PRESIDENT. The time of the Senator from Georgia has expired.

Mr. STEPHENS and Mr. BORAH addressed the Chair.

The VICE PRESIDENT. The Senator from Mississippi.

Mr. STEPHENS. Mr. President, may I say just a word? I desire to withdraw the resolution that I offered by way of substitute for the committee resolution. I see no reason for having two votes on this matter, so at this time I withdraw my resolution. If the Senator from Idaho [Mr. BORAH] desires to speak, I will yield the floor to him, with the understanding that if he does not occupy the 15 minutes I shall claim the balance of the time.

Mr. BORAH. Mr. President, this controversy has been submitted with such detail and fullness, and the time remaining is so short, that one must confine his remarks to very general propositions.

I presume every Senator desires to know before he casts his vote, or would like to reach a conclusion, as to what the voters in Iowa did upon last election day, whom they elected as Senator from that State, and will be governed by that rather than the proceedings which may or may not have taken place before the Committee on Privileges and Elections. In other words, I presume every Senator, if he can come to a conclusion under the law and upon the record as to who was really elected from that State, will be governed by that state of facts and by that condition rather than by any proceedings or any stipulations or any waivers about which there has been much controversy in this debate.

Senator Brookhart holds the certificate of election. The authorities in the State of Iowa canvassed the returns and issued a certificate of election. That certificate was presented here, Senator Brookhart was sworn in, and now holds the seat. In view of the present condition of the record, and in view of the present condition of facts as they are presented to the Senate, that to my mind is a controlling factor in this controversy.

In the first place, in order to deprive Senator Brookhart of his seat here it must be conceded that we must disregard the law of the State of Iowa. The 1,344 votes which are to be taken from him, according to the majority report, must be taken from him in disregard and in disrespect of the law of that State. The law of Iowa provides that a voter may vote a straight ticket in three different ways: First, by putting a cross in the circle at the head of the ticket; second, by putting a cross in the square opposite each name upon the ticket; third, by putting a cross in the circle at the top of the ticket,

and by putting crosses in the squares before any or all names upon the ticket. The law is plain and unmistakable. A ticket voted in any of these ways is a legal ballot, and must be so regarded under the laws of that State. We have no other rule to guide us.

The committee has found 1,344 ballots in which there was a cross in the circle at the head of the ticket, and in which all names were voted upon, apparently, upon the ballot, except that of Brookhart's, by putting a cross in the square opposite each name.

The law of Iowa must be taken into consideration in order to arrive at the intent of the voter. It is true that the intent of the voter should prevail, but the intent of the voter must be ascertained by taking into consideration the law under which he was casting his ballot. The strong and predominant and dominating intent of the voter in the first instance was to cast a legal ballot. The presumption is, a conclusive presumption, that he knew the law under which he was voting. We can not arrive at the intent of the voter other than by considering the fact that he intended to vote a legal ballot, and was voting in accordance with the laws of the State of Iowa.

It has been said that instructions were sent out which might lead to the inference that a different method of voting would be regarded by the election board as a legal method. In the first place, if the instructions were contrary to the law of the State, undoubtedly the law of the State would have to obtain. In the second place, the instructions which I have examined are not in contravention to the terms of the law, are not confusing under the law. The instructions designated one way in which a voter could vote a straight ballot. They did not pretend or assume to cover the other two subdivisions of the law.

For instance, the instruction which has been read to us was to the effect that if a voter desired to vote a straight ballot, he should put a cross in the circle at the head of the ticket only. But no one would controvert the proposition that, notwithstanding the instruction, if a voter disregarded those instructions and put a circle in front of every name upon the ballot, that would be a straight ballot. The instructions did not undertake to cover the entire law, and that had been the law in Iowa, off and on, for 30 years. At one time it was the law, at another time it was changed, and then they went back to the law as it has existed since 1919. Different contests had gone to the courts in that State under the law; it had been a matter of public concern and of public interest, and undoubtedly the voters of the State knew that they could vote a straight ticket in three different ways.

But let us assume that there was confusion upon this proposition. We can not set aside a certificate of election; we can not set aside the plain provisions of the law, upon inference, upon conjecture, upon speculation. If they are to be set aside, they must be set aside upon legal, competent, and, according to the courts, overwhelming proof as to the intent and purpose of the voter. We must have clear legal proof. That is not here.

So it seems to me that 1,344 votes can only be denied Mr. Brookhart upon the theory that we are to disregard the plain provisions of the Iowa statute with reference to the manner in which a voter may cast a straight ballot.

Secondly, we come to the more debatable proposition with reference to the 76 votes which must be accounted for, even if the 1,344 votes are given to Senator Brookhart. What is the situation? An election is held in the State. The entire machinery is under the control of the State. The election is held under the State law, and in accordance with the State law. The canvassers, or the parties in authority, canvass the situation, and arrive at the conclusion that Senator Brookhart has been elected, and he is given the certificate of election. It is conceded here that for some reason, whether through fraud, which no one charges specifically, or whether through error, in some way 3,300 ballots are gone, or 3,500, as some one near me states. Before we can overturn the certificate of election, and the presumption that every officer in that State did his duty in canvassing the returns and in sending here a Senator, we must have an accounting for those 3,300 ballots. Whether we rely upon the official returns, or whether we rely upon the ballots, they must be accounted for and shown by legal and competent evidence to have been cast in contravention to the certificate of election.

If we take the fact that Brookhart is here with his certificate of election, then the second proposition is just as thoroughly established, that every presumption of law accompanies that certificate, the presumption that the officers did their duty, the presumption that the law was complied with, even the presumption that the 3,300 ballots were for Senator Brookhart—those presumptions obtain and control until they are overcome

by legal and competent evidence. It does not make any difference to me, so far as this proposition is concerned, whether the one or the other—the official count or the ballots—is the best evidence as against the other. The fact remains that there is a discrepancy and that there is a condition of affairs unaccounted for by legal evidence, by competent testimony.

If we were in a court of justice and were undertaking to break this certificate, we would not only have to bring the ballots to the court, but we would have to bring them under certain terms and conditions which would make them legal and competent evidence to overcome the certificate of election. I contend, Mr. President, that as to legal evidence, there is no legal evidence whatever as to these 3,300 ballots, as to what became of them, for whom they should be counted, or how they should be disposed of.

If it were not for the certificate of election, I am frank to say it would be very difficult to tell whether Mr. Steck or Mr. Brookhart was entitled to the seat. In other words, it would be very difficult for the Senate to seat either one of these gentlemen upon the evidence which is now presented to us, because it is not such evidence as would be accepted, in my judgment, in a court for the purpose of seating or unseating a Member of the Senate.

I thought I had a copy of the instructions which were given out, but I have not. I think they have been read, however. As I said a moment ago, if we view the instructions as covering the entire law, and, if so, in contravention of it, we must take the law; but, in my opinion, the instructions do not contravene the law. Therefore we have these voters casting their ballots under the law of the State and the officers of the State canvassing the returns, and we have the legal result of that canvass here to be passed upon.

I ask any Member of this body, where is the legal evidence to overturn the certificate of election? What part of the testimony can be pointed to as bearing the test of the legal and competent testimony for the purpose of overturning the certificate of election?

It has been argued here at length as to whether or not there was fraud in the different precincts. That is wholly immaterial. It does not make any difference how the discrepancy happened or under what circumstances it took place. The committee has failed to present it in such way that it amounts to evidence against the acts and conduct and the results of the acts and conduct of the officers of the State of Iowa, and until that has been done the certificate of election must be the authority for the Senate seating Mr. Brookhart. Otherwise, we are going to establish, first, that we do not intend to follow the law of a State; and, secondly, that we will decide controversies of this kind without legal evidence. If we establish that kind of a precedent, we will have entered into an undefined field without chart or compass, without any manner or means by which we shall be guided in the future. Disregarding, in the first instance, the law, and disregarding, in the second instance, the certificate of election, without legal or competent evidence to overcome it, I can not conceive of an election without law under which the election is held, and if it is held under the law then we must be governed by the law.

The VICE PRESIDENT. The hour of 5 o'clock having arrived, under the unanimous-consent agreement, Senate Resolution 194, reported by the Senator from Kentucky [Mr. ERNST] from the Committee on Privileges and Elections, is to be voted upon. The resolution reads:

*Resolved*, That Daniel F. Steck is hereby declared to be a duly elected Senator of the United States from the State of Iowa for the term of six years, commencing on the 4th day of March, 1925, and is entitled to be seated as such.

The question is upon agreeing to the resolution.

Mr. ASHURST and Mr. REED of Missouri demanded the yeas and nays, and they were ordered.

The Chief Clerk proceeded to call the roll.

Mr. FESS (when his name was called). I am paired with the senior Senator from Illinois [Mr. McKINLEY]. If that Senator were present, he would vote "yea." Were I permitted to vote, I would vote "nay."

Mr. McMASTER (when his name was called). I have a pair with the junior Senator from Colorado [Mr. MEANS]. If he were present, he would vote "yea." I transfer that pair to the junior Senator from Minnesota [Mr. SCHALL], who, if present, would vote "nay." I therefore am at liberty to vote. I vote "nay."

Mr. SHORTRIDGE (when his name was called). On this vote I have a pair with the junior Senator from Delaware [Mr. DU PONT], who is absent on account of illness. If he were present, he would vote "yea." If I were permitted to vote, I would vote "nay."

Mr. HEFLIN (when Mr. UNDERWOOD's name was called). My colleague [Mr. UNDERWOOD] is absent on account of illness.

Mr. WADSWORTH (when his name was called). Upon this question I have a pair with the senior Senator from Alabama [Mr. UNDERWOOD]. I understand that were he present he would vote in the affirmative. If I were permitted to vote, I would vote in the negative.

The roll call having been concluded the result was announced—yeas 45, nays 41, as follows:

## YEAS—45

Bayard	George	Keyes	Sheppard
Bratton	Gerry	King	Simmons
Broussard	Gillett	McKellar	Smith
Bruce	Glass	McLean	Swanson
Butler	Goff	Mayfield	Trammell
Caraway	Greene	Neely	Tyson
Copeland	Harrell	Overman	Warren
Dale	Harris	Phipps	Watson
Deneen	Harrison	Pittman	Weller
Edwards	Hefflin	Robinson, Ark.	
Ernst	Jones, N. Mex.	Robinson, Ind.	
Fletcher	Kendrick	Sackett	

## NAYS—41

Ashurst	Ferris	Metcalf	Shipstead
Bingham	Frazier	Moses	Smoot
Blease	Gooding	Norbeck	Stanfield
Borah	Hale	Norris	Stephens
Cameron	Howell	Nye	Walsh
Capper	Johnson	Oddie	Wheeler
Couzens	Jones, Wash.	Pepper	Williams
Curtis	La Follette	Pine	Willis
Dill	Lenroot	Ransdell	
Edge	McMaster	Reed, Mo.	
Fernald	McNary	Reed, Pa.	

## NOT VOTING—10

Brookhart	Fess	Schall	Wadsworth
Cummins	McKinley	Shortridge	
du Pont	Means	Underwood	

So Daniel F. Steck was declared to be a duly elected Senator of the United States from the State of Iowa for the term beginning March 4, 1925.

## INDEBTEDNESS OF ITALY TO THE UNITED STATES

Mr. SMOOT. I ask that the unfinished business be laid before the Senate.

The VICE PRESIDENT. The Chair lays before the Senate the unfinished business, which is House bill 6773.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 6773) to authorize the settlement of the indebtedness of the Kingdom of Italy to the United States of America.

## PROPOSED RECESS

Mr. SMOOT. Mr. President, I move that the Senate take a recess until 12 o'clock to-morrow.

Mr. HARRISON. Mr. President, will the Senator withhold his motion just a moment?

Mr. SMOOT. Very well.

Mr. HARRISON. To-morrow a number of Senators are going to be out of the city. We have had a pretty tense situation for some days. Can we not take a recess until the following day?

Mr. SMOOT. I would not like to agree to that.

Mr. McKELLAR. If the Senator will yield, I will state that I gave notice a day or two ago that I would speak to-morrow on the unfinished business. I find, however, that I am obliged to leave the city. I hope the Senator will agree to a recess until Wednesday. I can not possibly be here to-morrow.

Mr. SMOOT. There are other Senators who are ready to proceed to-morrow, and I do not think it would be advisable to take a recess until Wednesday.

Mr. HARRISON. Will not the Senator let the sense of the Senate be tested out on the proposition?

Mr. SMOOT. I do not think that is necessary.

Mr. ROBINSON of Arkansas. I suggest to the Senator from Mississippi that he can test it out himself if he chooses to make a motion to recess over until Wednesday. He can do that without getting the consent of the Senator from Utah.

Mr. McKELLAR. We merely wanted to get his approval. I hope the Senator from Utah will let the unfinished business go over until Wednesday.

Mr. SMOOT. I want the Senate to take a recess until to-morrow. There are other Senators who are ready to proceed.

Mr. HARRISON. Mr. President, I move that when the Senate takes a recess to-night it be until Wednesday morning at 12 o'clock.

The VICE PRESIDENT. The question is on the motion of the Senator from Mississippi.

Mr. HARRISON. I ask merely for a rising vote on the question.

Mr. SMOOT. Mr. President, a point of order. My motion was that the Senate take a recess until to-morrow at 12 o'clock.

Do we not have to vote on that motion before we vote on the motion of the Senator from Mississippi?

The VICE PRESIDENT. The motion of the Senator from Utah will take precedence over that of the Senator from Mississippi.

Mr. SMOOT. Let us have the yeas and nays on the motion that the Senate take a recess until to-morrow at 12 o'clock.

Mr. HARRISON. I move to amend the motion by making it Wednesday at 12 o'clock.

The VICE PRESIDENT. The Chair will hold the amendment to be in order. The question is on agreeing to the amendment offered by the Senator from Mississippi to the motion of the Senator from Utah.

Mr. SMOOT. I call for the yeas and nays.

The VICE PRESIDENT. The question before the Senate is on agreeing to the amendment of the Senator from Mississippi to the motion of the Senator from Utah, on which the Senator from Utah demands the yeas and nays.

Mr. ROBINSON of Arkansas. Mr. President, pending the motion of the Senator from Utah [Mr. Smoot], I ask him if he will not withhold the motion for a moment, in order that Mr. STECK may have an opportunity to be sworn in as a Member of the Senate? Mr. STECK is now present.

Mr. SMOOT. I have no objection to that, Mr. President.

#### SENATOR FROM IOWA

The VICE PRESIDENT. Mr. STECK will present himself at the desk and take the oath of office.

Mr. STECK, escorted by Mr. CUMMINS, advanced to the Vice President's desk, and the oath prescribed by law having been administered to him, he took his seat in the Senate.

#### RECESS

Mr. SMOOT. I move that the Senate stand in recess until to-morrow at 12 o'clock.

The VICE PRESIDENT. The Senator from Utah moves that the Senate recess until to-morrow at 12 o'clock. The Senator from Mississippi [Mr. HARRISON], the Chair understands, offers an amendment to the motion of the Senator from Utah, that the Senate take a recess until 12 o'clock on Wednesday. The question is on the amendment of the Senator from Mississippi.

Mr. SMOOT and Mr. JONES of Washington called for the yeas and nays, and they were ordered.

The Chief Clerk proceeded to call the roll.

Mr. ROBINSON of Arkansas (when his name was called). I have a general pair with the Senator from Illinois [Mr. McKINLEY], and therefore withhold my vote.

The roll call having been concluded, the result was announced—yeas 27, nays 54, as follows:

#### YEAS—27

Bratton	George	Neely	Steck
Broussard	Gerry	Overman	Stephens
Copeland	Harris	Pittman	Swanson
Edwards	Harrison	Ransdell	Trammell
Ernst	Heflin	Reed, Mo.	Tyson
Fernald	Kendrick	Sheppard	Weller
Fletcher	McKellar	Simmons	

#### NAYS—54

Bayard	Fess	McMaster	Sackett
Bingham	Frazier	McNary	Shipstead
Blease	Gillett	Mayfield	Shortridge
Bruce	Glass	Metcalf	Smith
Butler	Goff	Moses	Smoot
Cameron	Gooding	Norbeck	Stanfield
Capper	Hale	Norris	Wadsworth
Couzens	Howell	Nye	Walsh
Cummins	Johnson	Oddie	Warren
Curtis	Jones, Wash.	Pepper	Watson
Deneen	Keyes	Phipps	Williams
Dill	King	Pine	Willis
Edge	La Follette	Reed, Pa.	
Ferris	Lenroot	Robinson, Ind.	

#### NOT VOTING—15

Ashurst	du Pont	McKinley	Schall
Borah	Greene	McLean	Underwood
Caraway	Harrell	Means	Wheeler
Dale	Jones, N. Mex.	Robinson, Ark.	

So Mr. HARRISON's amendment to Mr. Smoot's motion was rejected.

The VICE PRESIDENT. The question is on the motion of the Senator from Utah that the Senate stand in recess until 12 o'clock to-morrow.

Mr. HARRISON. I desire to ask the Senator from Utah a question. Will not the Senator from Utah agree that to-morrow at 2 o'clock we shall adjourn or take a recess?

Mr. SMOOT. If the Senate will agree to meet to-morrow at 11 o'clock, I will be perfectly willing to do that.

Mr. HARRISON. Then let us meet at 11 o'clock.

The VICE PRESIDENT. Does the Senator from Utah, then, modify his motion?

Mr. SMOOT. I will modify my motion, as I know Senators really have an important appointment early to-morrow afternoon, and move that the Senate take a recess until 11 o'clock to-morrow.

The VICE PRESIDENT. The question is on the motion of the Senator from Utah that the Senate stand in recess until 11 o'clock to-morrow.

The motion was agreed to; and (at 5 o'clock and 25 minutes p. m.) the Senate took a recess until to-morrow, Tuesday, April 13, 1926, at 11 o'clock a. m.

#### CONFIRMATIONS

*Executive nominations confirmed by the Senate April 10 (legislative day of April 5), 1926*

[Omitted from the RECORD of April 10, 1926]

#### APPOINTMENTS IN THE ARMY

William Payne Jackson to be brigadier general, Infantry.  
Harry Frederick Rethers to be assistant to the Quartermaster General, Quartermaster Corps.  
Edgar Jadwin to be Chief of Engineers.  
Herbert Deakne to be assistant to the Chief of Engineers.

#### APPOINTMENTS BY TRANSFER IN THE ARMY

Robert Wilkins Douglass to be second lieutenant, Air Service.

#### PROMOTIONS IN THE ARMY

##### TO BE MAJORS

Walter Davis Dabney.  
Gabriel Hoyt.  
William Alexander MacNicholl.

##### POSTMASTERS

##### FLORIDA

Ira C. Williams, Dania.

##### OHIO

Faye W. Helmick, Baltimore.  
Helen M. Roley, Basil.  
Louis A. Conklin, Forest.  
Mae E. Douds, Hudson.  
John B. Corns, Ironton.  
Howard C. Moorman, Jamestown.  
Albert E. Gale, Lima.  
John Q. Sanders, Waynesfield.

##### WASHINGTON

George D. Montfort, Blaine.  
Elizabeth E. Trasher, Clearlake.  
William W. Campbell, Colville.  
Mary A. Johns, Kalama.  
Allan Austin, Onalaska.  
Lawrence C. McLean, Selleck.  
Nora S. Okerberg, Soap Lake.  
Fanny I. Jennings, Spangle.  
May V. Garrison, Sumas.  
H. Robert Nelson, Wilkeson.

#### HOUSE OF REPRESENTATIVES

Monday, April 12, 1926

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O thou ancient of days. Teach us the truth of divine care, the sweet satisfaction of repentance, the blessings of obedience, and the marvelous inspiration of Thy holy word. May we have the courage of unrewarded labor, the gentility of speech, and the nobility of silence. O bless us with the music of a loving heart that sings and rejoices when things go wrong. Be our guide and guardian and grant us a sense of Thy companionship. May our dear homeland see the glory of the Lord and the excellency of our God. Let all institutions continue to laud and magnify the spirit and teachings of Him, the Divine Teacher of men. Dedicate all firesides to the value of love, to the warm joys of friendship, to reverence in the hearts of children, and to a lasting desire to purify the heart of the world. We pray in the blessed name of Jesus, our Savior. Amen.

The Journal of the proceedings of Friday, April 9, 1926, was read and approved.

#### GOOD ROADS

Mr. NELSON of Wisconsin. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on the road bill, as I shall not be able to be here on Thursday.